

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/1. Authority for and over the armed forces in general.

ARMED FORCES (

1. THE LEGAL POSITION OF THE ARMED FORCES

(1) LEGALITY AND REGULATION OF THE ARMED FORCES

(i) Constitutional Authority

1. Authority for and over the armed forces in general.

The armed forces include naval forces, land forces and air forces. Authority for the existence of the naval forces of the Crown derives from the royal prerogative¹. The existence of the land forces has traditionally been regarded as authorised by the royal prerogative and by statute, but at the present day it is from statute that their existence is derived². Authority for the existence of the air forces has been wholly statutory from their inception³. The supreme government, command and disposition of all forces by sea, land and air, and of all defence establishments, is vested in the Crown by prerogative right⁴, and, although most matters relating to the forces are now primarily regulated by statute, many wide and important powers are still retained by the Crown and are exercised by the Defence Council and through it by the Admiralty Board, the Army Board and the Air Force Board⁵. Thus, in relation to the administration of the armed forces, there is a wide measure of administrative discretion, with which the courts will not interfere and which they will not seek to control⁶.

The armed forces of the Crown raised in the United Kingdom consist of the Royal Navy, the regular army forces and the regular air force⁷. The reserves of those forces comprise the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Air Force Reserve and the Royal Auxiliary Air Force⁸.

Certain jurisdictional and disciplinary powers, exercisable in some cases exclusively and in others concurrently with the authorities of the United Kingdom, are conferred on members of the Commonwealth and other specified countries over their forces (and the civilian components of them) present in the United Kingdom by invitation of Her Majesty's government in the United Kingdom. Such forces are known as visiting forces⁹. Certain designated international headquarters and defence organisations are in a similar position¹⁰.

1 As to the royal prerogative and its exercise and limitation in relation to the armed forces, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq. See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) paras 7, 46 et seq.

2 As to the legislation see paras 3, 8, 14 et seq post.

3 See note 2 supra.

4 Com Dig, Prerogative, C 3. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 886.

5 See para 2 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

6 *China Navigation Co Ltd v A-G* [1932] 2 KB 197 at 214-215, CA, per Scrutton LJ, and at 227-228 per Lawrence LJ. When Parliament has provided the annual funds for the armed forces, the disposition and use of the forces is entirely within the royal prerogative: *China Navigation Co Ltd v A-G* supra. However, the previously unrepealed part of the preamble to 13 Car 2 stat 1 c 6 (Militia) (1661), cited by both of those judges, was repealed by the Statute Law (Repeals) Act 1969 s 1, Schedule Pt I. See also *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 405, [1984] 3 All ER 935 at 946, HL, per Lord Scarman ('the undoubted principle that all matters relating to the disposition and armament of the armed forces are left to the unfettered discretion of the Crown'); *Mutasa v A-G* [1980] QB 114, [1979] 3 All ER 257; *R v Secretary of State for War* [1891] 2 QB 326, CA; *Chandler v DPP* [1964] AC 763, [1962] 3 All ER 142, HL. As to discussion in Parliament concerning the disposition of the armed forces see *Fourth Report of the Foreign Affairs Committee, Session 1999-2000, Kosovo* (23 May 2000, HC 28-I, p ix); *Fourth Report from the Foreign Affairs Committee, Session 1999-2000, Kosovo, Response of the Secretary of State for Foreign and Commonwealth Affairs* (Cm 4825) (2000).

7 As to these forces see para 151 et seq post. The traditional order of precedence of the services is: Royal Navy, Army, Royal Air Force. The sole regulations on the subject of precedence are concerned with the order of march on combined service parades: see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 93 para J.9312; the Queen's Regulations for the Army 1975 paras J8.003-J8.012; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 5 para J175. For the corresponding ranks of the three services see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para J.0381, Table 3-1; the Queen's Regulations for the Army 1975 para J2.042; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 4 para J126, Table A. As to forces raised in Commonwealth countries or colonies, and their relationship to forces raised in the United Kingdom see paras 10-11, 22, 255-256 post. As to women's services legislation see para 18 post. As to the meaning of 'United Kingdom' see para 20 note 1 post. As to the Commonwealth and colonies see COMMONWEALTH vol 13 (2009) PARAS 701, 705.

8 Reserve Forces Act 1996 s 1(2). See further paras 13, 17 post. All the enactments relating to national service, that is, a system of compulsory service in the armed forces or in the civil defence organisation, have been repealed.

9 See para 135 et seq post.

10 See para 150 post.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/2. Government and command of the armed forces.

2. Government and command of the armed forces.

In 1964, arrangements were made under the royal prerogative for a Principal Secretary of State (to be known as the Secretary of State for Defence) to be charged with general responsibility for defence, and for the establishment of a Defence Council to exercise on behalf of the Crown its powers of command and administration over the armed forces, and of Admiralty, Army and Air Force Boards charged (under the Defence Council) with the administration of the naval, military and air forces respectively¹. The functions previously conferred by any enactment on the authorities superseded as a result of these arrangements were transferred to the Secretary of State and the Defence Council². The Defence Council may issue directions as to the functions of command and administration to be discharged under the Council by the Admiralty, Army and Air Force Boards respectively³.

The Secretary of State for Defence has succeeded, as a corporation sole, to all property, rights and liabilities, in the United Kingdom and elsewhere, of the Minister of Defence, the Admiralty, the Secretaries of State for War and for Air, and the Army and Air Councils⁴.

In carrying out their functions, the Secretary of State for Defence, the Defence Council, and the Admiralty, Army and Air Force Boards act through the recognised channels of the Ministry of Defence⁵, which is subject to investigation by the Parliamentary Commissioner for Administration⁶.

Her Majesty is expressly empowered to make regulations as to the persons, being members of Her Majesty's forces, in whom command over her military or air forces, or any part or member of them, is to be vested, and as to the circumstances in which that command is to be exercised⁷. Her Majesty is also empowered to make regulations providing for the vesting of command over her forces, or any part or members of them, in persons who are members of forces of countries outside Her Majesty's dominions, and as to the extent to which such command is to be exercised⁸.

1 See the Defence (Transfer of Functions) Act 1964 s 1(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438.

2 See the Defence (Transfer of Functions) Act 1964 s 1(1)-(4) (s 1(3) amended by the Statute Law (Repeals) Act 1989); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438. As to the distribution between the Secretary of State for Defence and the Defence Council of certain powers as to naval personnel, naval courts-martial and naval disciplinary courts see s 1(3)(b), (4); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 441. As to consequential and transitional provisions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438.

3 At the date at which this volume states the law, the directions in force were the Admiralty Board Directions 2000, the Army Board Directions 2000, and the Air Force Board Directions 1995. These directions are not comprised in statutory instruments but are included in the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Annex B p xix, the Queen's Regulations for the Army 1975 para J1.004 Annex B and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 2 para J19(4) App 1D, respectively. Subject to the directions of the Defence Council, the Council's functions under any enactment (including any instrument having effect under any enactment) may be discharged by the Admiralty Board, the Army Board or the Air Force Board: see the Defence (Transfer of Functions) Act 1964 s 1(5). However, s 1(5) does not have effect so far as it relates to the functions of the Defence Council under the Naval Discipline Act 1957 ss 70-71 (as substituted and amended) (which relate to the review of the findings and sentences of courts-martial and the alteration or remission of their sentences: see paras 473-474 post): Armed Forces Act 1971 s 51. See also the Defence (Transfer of Functions) Act 1964 s 1(7); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 444.

4 See *ibid* s 2(1), (2) (amended by the Ministers of the Crown Act 1974 s 4(3) Sch 3); and the Defence (Transfer of Functions) (Appointed Day) Order 1964, SI 1964/487. As to the meaning of 'United Kingdom' see para 20 note 1 post. As to the functions of the Secretary of State for Defence, including the procurement powers transferred to him on the dissolution of the Ministry of Supply in 1971, and the constitution and powers of the Defence Council and of the Admiralty, Army and Air Force Boards see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 441 et seq.

5 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

6 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 41 et seq.

7 Army Act 1955 s 177(1); Air Force Act 1955 s 177(1). In relation to members of Her Majesty's military or air forces when in aircraft, this provision has effect as if references to members of Her Majesty's forces included references to any person in command of an aircraft: Army Act 1955 s 177(2); Air Force Act 1955 s 177(2). For this purpose references to aircraft or activities or places connected with aircraft include reference to hovercraft or activities or places connected with hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 5, Sch 2 Pt A. These provisions have enabled Queen's Regulations to be made placing civilian captains of aircraft in command of members of the military or air forces, when in their aircraft, in matters relating to the control or safety of the aircraft: see eg the Queen's Regulations for the Army 1975 para 2.018. The Army Act 1955 s 177(1) and the Air Force Act 1955 s 177(1) are declaratory in form and do not affect any power vested in Her Majesty apart from the Army Act 1955 s 177 and the Air Force Act 1955 s 177: Army Act 1955 s 177(3); Air Force Act 1955 s 177(3). As regards Her Majesty's naval forces, the power to make such regulations derives from the royal prerogative: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 887.

8 Armed Forces Act 1966 s 16(1). In s 16, however, 'Her Majesty's forces' does not include a force of a Commonwealth country within the meaning of the Naval Discipline Act 1957 (see para 20 note 6 post): Armed Forces Act 1966 s 16(2). Section 16(1) applies notwithstanding anything in the Act of Settlement (1700) s 3 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS) (Armed Forces Act 1966 s 16(1)), and nothing in s 16(1), (2) is to be taken to affect the power vested in Her Majesty by virtue of the prerogative of the Crown (s 16(3)). As to Her Majesty's dominions, and as to the Commonwealth, see COMMONWEALTH vol 13 (2009) PARAS 701, 707.

UPDATE

2 Government and command of the armed forces

TEXT AND NOTES 2, 3--Defence (Transfer of Functions) Act 1964 s 1(3) further amended, s 1(4) repealed, s 1(5) amended: Armed Forces Act 2006 Sch 17.

NOTE 3--Armed Forces Act 1971 s 51 repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTE 7--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

TEXT AND NOTE 8--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/3. The law governing members of the armed forces.

3. The law governing members of the armed forces.

It is one of the cardinal features of the law of England that a person does not, by enlisting in or entering the armed forces, thereby cease to be a citizen, so as to deprive him of his rights or to exempt him from his liabilities under the ordinary law of the land¹. He does, however, in his capacity as a member of those forces, incur additional responsibilities, for he becomes subject to a code of naval, military or air force law². The disciplinary provisions of these codes are largely contained in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957³.

It was provided in the Army Act 1955 and the Air Force Act 1955, as originally enacted, that each of those Acts should expire 12 months after its coming into operation, unless continued in accordance with the provisions contained in each of the Acts enabling Her Majesty from time to time to provide by Order in Council that the Act should continue in force for a further period not exceeding 12 months⁴. However, unless Parliament otherwise determined, Orders in Council could not continue either of the Acts in force beyond a period of five years from the date of its commencement⁵. Subsequent provisions contained in Armed Forces Acts passed at five-yearly intervals continued these arrangements until 2001, when new provision was made requiring annual renewal⁶.

The early Naval Discipline Acts (of which the Naval Discipline Act 1957 remains in force) were permanent until repealed or amended, but provision as to the duration and continuance of the Naval Discipline Act 1957 has now been brought into line with that relating to the Army Act 1955 and the Air Force Act 1955⁷.

Thus, at the present time, the Royal Navy, the army and the Royal Air Force are alike in being each governed by a statute, providing a disciplinary code, which continues in force for one year only, but which may be renewed by Her Majesty for one further year at a time by an Order in Council until the end of the five-year period specified in the relevant Armed Forces Act, after which the service discipline Act will expire unless again renewed by statute. Prior to renewal, the opportunity is taken to carry out a process which has come to be known as the quinquennial review of the service discipline Acts, during which they are re-examined so that they may be brought up to date by the Armed Forces Act providing for their further renewal.

These codes of discipline for the armed forces are part of the ordinary law of the land, although they are applicable only to persons expressly made subject to one or other of them, either as members of the Royal Navy, the army or the Royal Air Force, or as belonging to certain specified categories of civilians associated with the armed forces. They are not to be confused with what is called martial law, which comes into operation only when a state of actual war, or of insurrection or rebellion amounting to war, exists⁸. Martial law consists in the use, in those circumstances, of the amount of force necessary to restore order by the Crown and its officers⁹, and the term 'martial law' is especially used to describe the employment, in the restoration of order in times of grave insurrection or civil disturbance, of the armed forces, who have the right, and indeed the duty, to use such force as may be necessary, but no more; this may include the subjection of civilians to trial by military tribunals¹⁰, even though the ordinary courts of law are still sitting¹¹.

1 See *Burdett v Abbot* (1812) 4 Taunt 401 at 449-450, Ex Ch, per Mansfield CJ. As to the civil law in relation to the armed forces see further para 52 et seq post. The Human Rights Act 1998 applies to a member of the armed forces as it applies to a civilian: see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Crown continues to be able

to exercise the same right of pardon in respect of offences committed according to service law as for those according to the rest of the ordinary law of the land. As to this right see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 823 et seq, 890. As to the saving for the royal prerogative in the Courts-Martial (Appeals) Act 1968 s 54 see para 529 post.

2 As to when and where members of the armed forces are so subject see para 306 et seq post.

3 As to the other statutes concerning the army, the air force and the navy, and their respective reserve and auxiliary forces, see para 12 et seq post.

4 See the Army Act 1955 s 226(2)-(5) (repealed); and the Air Force Act 1955 s 224(2)-(5) (repealed). For the current position see note 6 infra.

5 Army Act 1955 s 226(4) proviso (repealed); Air Force Act 1955 s 224(4) proviso (repealed).

6 See the Army and Air Force Act 1961 s 1 (repealed); the Armed Forces Act 1966 s 1 (repealed); the Armed Forces Act 1971 s 1 (repealed); the Armed Forces Act 1976 s 1 (repealed); the Armed Forces Act 1981 s 1; the Armed Forces Act 1986 s 1 (repealed); the Armed Forces Act 1991 s 1 (repealed); and the Armed Forces Act 1996 s 1 (repealed). The current statute provides for the expiry of the Army Act 1955 and the Air Force Act 1955 (and the Naval Discipline Act 1957: see the text and note 7 infra) on 31 August 2002 unless continued in force, for a period not exceeding 12 months, by Order in Council: see the Armed Forces Act 2001 s 1(1), (2). The Army, Air Force and Naval Discipline Acts (Continuation) Order 2002, SI 2002/1820, accordingly provided for their continuation until 31 August 2003, and the Army, Air Force and Naval Discipline Acts (Continuation) Order 2003, SI 2003/1869, provides for their continuation until 31 August 2004. The Acts may not be continued by this method beyond the year 2006: Armed Forces Act 2001 s 1(3).

No recommendation may be made to Her Majesty in Council to make an order under s 1(2) unless a draft of it has been laid before Parliament and approved by a resolution of each House: s 1(4).

7 See the Armed Forces Act 1971 s 1(2)-(5) (repealed); and the text and note 6 supra.

8 See *Tilonko v A-G of Natal* [1907] AC 93 at 94-95, PC, per Lord Halsbury. As to when a state of war is deemed to exist see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 809 et seq; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 406 et seq.

9 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 821.

10 *Ex p Marais* [1902] AC 109, PC; following *Elphinstone v Bedreechund* (1830) 1 Knapp 316, PC. Once the fact of actual war is established, the civil courts have no jurisdiction to question the actions of the military, but it is for the civil courts to determine, if their jurisdiction is invoked, whether a mere riot or disturbance, not amounting to a state of war, has been treated with excessive severity, and whether the intervention of the military was necessary: *R v Allen* [1921] 2 IR 241 at 269 per Molony CJ; followed in *R (Garde) v Strickland* [1921] 2 IR 317.

11 *Ex p Marais* [1902] AC 109 at 114, PC; *R v Allen* [1921] 2 IR 241 at 269-270 per Molony CJ. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 821.

UPDATE

3 The law governing members of the armed forces

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752, provides for the continuation of the Armed Forces Act 2006 until 8 November 2010.

See Criminal Justice and Immigration Act 2008 s 151 (effect of amendments to criminal justice provisions applied for the purposes of service law).

NOTE 6--Armed Forces Act 2001 s 1 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/4. Relationship between the Crown and members of the armed forces.

4. Relationship between the Crown and members of the armed forces.

The terms of engagement of members of the armed forces do not constitute a contract of service in the strict sense¹. All such persons are appointed by the Crown under the royal prerogative, and hold their appointments, whatever their rank, at the Crown's pleasure². They are subject to dismissal at any time without notice and without any cause being assigned³, and the courts will not entertain an action for wrongful dismissal⁴ or for reduction of pay⁵. In general, the position of the Crown's civilian employees, including those employed by or on behalf of the Ministry of Defence, is similar⁶, but, although the right of the Crown to dismiss them at pleasure still remains, their legal position as to tenure of office and conditions of employment has been much changed by statute⁷.

The Crown is no longer completely immune from liability to members of the armed forces in tort⁸.

The statutory provisions which render it unlawful, in the field of employment, to discriminate against a person on racial grounds⁹, or to apply discriminatory practices¹⁰, apply to service in any of the naval, military or air forces of the Crown as they apply to employment by a private person¹¹. The corresponding provisions in relation to sex discrimination¹² also apply to service in any of those forces¹³. A serviceman or woman may present a complaint to an employment tribunal if the complainant has previously made the complaint to an officer under the service redress procedures. The complaint must have been submitted to the Defence Council, which must have made a determination with respect to that complaint¹⁴.

1 See *Mitchell v R* [1896] 1 QB 121n, CA; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 902. See also *IRC v Hambrook* [1956] 2 QB 641 at 653-655, [1956] 1 All ER 807 at 810-812 per Goddard CJ; *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457 at 488, [1955] 1 All ER 846 at 857, PC, per Viscount Simonds LC (the position of a constable was held to be indistinguishable from that of a soldier). This proposition was upheld in *Quinn v Ministry of Defence* [1998] PIQR P387 at P396, CA, per Swinton Thomas LJ (in respect of members of the armed forces and police officers public policy dictates that there is no intention to create legal relations). Members of the armed forces are, however, employees for the purpose of the Patents Act 1977 (see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 365): see the Armed Forces Act 1981 s 22.

2 *Re Tufnell* (1876) 3 ChD 164 (approved in *Quinn v Ministry of Defence* [1998] PIQR P387, CA); *Grant v Secretary of State for India* (1877) 2 CPD 445. There is no right to resign: see *Hearson v Churchill* [1892] 2 QB 144, CA (purported resignation of his commission by a naval officer, appointed by the Lords of the Admiralty to HMS Pembroke, who was borne on the books of that ship and who was in receipt of full pay; he was held, in these circumstances, to be in desertion when he left the ship to take up other employment, and a majority of the court concluded that 'an officer who has accepted a commission in Her Majesty's Navy cannot, under any circumstances whatever, resign without the consent of Her Majesty the Queen'); *Hume v A-G* [1960] NZLR 880 at 884, Supreme Court, per McCarthy J ('the plaintiff is not entitled as of right to have his resignation accepted'). As to the current position in the army see the Queen's Regulations for the Army 1975 para J9.022, which provides that 'at the discretion of the Defence Council ... an officer may be permitted, at his own request, to terminate his service on the Active List'. How this principle will stand with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 4.3(b) (see the Human Rights Act 1998 s 1(3), Sch 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS) will depend upon a court's view as to whether there is a distinction between: (1) military service for a fixed definable period; and (2) military service which, for an officer, is indeterminate except that he will normally be expected to retire at the age of 55. Were a court to draw this distinction and decide that in the latter case the claimed prerogative right is disproportionate to the needs of the armed forces, it will be required to indicate a normal notice period to avoid the situation foreseen in *Hearson v Churchill* supra where, if the law were otherwise, an 'officer can run away from his ship' (see at 149 per Lord Esher MR). See generally *Rubin, Military Law and the Service Engagement: Some Preliminary Conceptual Observations* (HC Select Committee on the Armed Forces Bill 2000-2001) (HC Paper (2000-2001) no 154-II App 7).

As to the Crown's prerogative see para 1 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq.

3 See the cases cited in notes 1-2 supra. Army officers can also be required to resign by the Defence Council: see the Queen's Regulations for the Army 1975 para 9.020A (resignation can be required where an officer has been tried by court-martial and the circumstances indicate his unsuitability to remain as a commissioned officer; discharge may be directed administratively).

4 *Grant v Secretary of State for India* (1877) 2 CPD 445.

5 *Leaman v R* [1920] 3 KB 663. See also para 218 post.

6 See *Riordan v War Office* [1959] 3 All ER 552, [1959] 1 WLR 1046 (on appeal [1960] 3 All ER 774n, [1961] 1 WLR 210, CA), following *Dunn v R* [1896] 1 QB 116, CA. See generally Sunkin and Payne (Eds) *The Nature of the Crown: A Legal and Political Analysis* (1999) Ch 11. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

7 See eg the Employment Rights Act 1996 s 191 (as amended) (see EMPLOYMENT vol 39 (2009) PARA 136). Section 191 (as amended) is applied to employment in the armed forces, including employment by an association established under the Reserve Forces Act 1996 Pt XI (ss 110-119) (see para 226 post): see the Employment Rights Act 1996 s 192 (as substituted and amended); and EMPLOYMENT vol 39 (2009) PARA 136. Those parts of the Employment Rights Act 1996 applying to members of the armed forces or employees of an association under the Reserve Forces Act 1996 (as set out in the Employment Rights Act 1996 s 192(2) (as amended)) may be amended by Order in Council: s 192(3). See EMPLOYMENT vol 39 (2009) PARA 136. Similarly, the Equal Pay Act 1970 s 1 (as amended) applies to service in the armed forces: see s 7A (as added, substituted and amended); and DISCRIMINATION vol 13 (2007 Reissue) para 432.

8 See para 55 post.

9 Ie the Race Relations Act 1976 Pt II (ss 4-15) (as amended): see DISCRIMINATION vol 13 (2007 Reissue) para 446 et seq. See also *R v Army Board of the Defence Council, ex p Anderson* [1992] QB 169, [1991] 3 All ER 375. As to the partnership agreement between the Ministry of Defence and the Commission for Racial Equality see the *Special Report from the Select Committee on the Armed Forces Bill 2000-2001* (HC Paper (2000-2001) no 154-II p 227).

10 Ie the Race Relations Act 1976 Pt IV (ss 28-33) (as amended): see DISCRIMINATION vol 13 (2007 Reissue) para 471 et seq.

11 See *ibid* s 75(2)(c), (10)(a); and the Armed Forces Act 1981 s 20(1), Sch 3 para 1(1), (5), Sch 5 Pt I.

12 Ie the Sex Discrimination Act 1975 Pt II (ss 6-20) (as amended), Pt IV (ss 37-42) (as amended): see DISCRIMINATION vol 13 (2007 Reissue) para 360 et seq. The word 'sex' within the Sex Discrimination Act 1975 means gender and not sexual orientation: *Smith v Gardner Merchant Ltd* [1998] 3 All ER 852, [1998] IRLR 510, CA; *MacDonald v Ministry of Defence* [2002] ICR 174, IH (Royal Air Force officer claimed unlawful discrimination under the Sex Discrimination Act 1975 through being forced to resign his commission on the grounds that he was a homosexual; it was held that the Sex Discrimination Act 1975 referred to gender and not sexual orientation and the appropriate comparator for him was a homosexual woman and thus he had not been discriminated against). See DISCRIMINATION vol 13 (2007 Reissue) para 346. As to the compatibility of a policy of discharging homosexuals from the armed forces and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) see *Lustig-Prean and Beckett v United Kingdom* (2000) 29 EHRR 548, ECtHR; *Smith and Grady v United Kingdom* [1999] IRLR 734, ECtHR; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 150. As to the position under EC Council Directive 76/207 (OJ L39, 14.2.76, p 40) (the 'Equal Treatment Directive') see *R v Secretary of State for Defence, ex p Perkins (No 2)* [1998] IRLR 508, [1998] Fam Law 730 (the Equal Treatment Directive does cover sexual orientation); and DISCRIMINATION vol 13 (2007 Reissue) para 338 et seq. See also note 13 infra.

13 See the Sex Discrimination Act 1975 s 85(2)(c) (added by the Armed Forces Act 1996 s 21(2)). See also DISCRIMINATION vol 13 (2007 Reissue) para 375. Nothing in the Sex Discrimination Act 1975 renders unlawful discrimination in admission to the Army Cadet Force, Air Training Corps, Sea Cadet Corps or Combined Cadet Force, or any other cadet training corps for the time being administered by the Ministry of Defence: s 85(5). It is not unlawful discrimination within the terms of the Sex Discrimination Act 1975 to do an act for the purpose of ensuring the combat effectiveness of the armed forces: s 85(4) (substituted by the Sex Discrimination Act 1975 (Application to Armed Forces etc) Regulations 1994, SI 1994/3276, reg 2(a); and amended by the Armed Forces Act 1996 s 21(3)). As to the effect of EC Council Directive 76/207 (OJ L39, 14.2.76, p 40) art 2(2) see C-273/97 *Sirdar v Army Board* [2000] ICR 130, [2000] IRLR 47, ECJ (not unlawful discrimination to prevent women joining special combat units, in this case, the Royal Marines; the applicant was a chef and wished to join the Royal Marines; the Army Board of the Defence Council decided that she could not do so on the broad ground that whatever the specialism of the person involved each member of the Royal Marines was expected to fight in a

commando unit; this case must be considered to be limited to service in special combat units where all members are expected to engage in actual combat; and the principles involved cannot be used to justify the exclusion of all women from military posts involving the use of weapons); *Case C-285/98 Kreil v Bundesrepublik Deutschland* (2000) ECR I-69, [2002] 1 CMLR 1047, ECJ (applicant wished to be employed in the German army in weapons electronics maintenance; the policy which only permitted women to serve in the armed forces in medical and military music services was held to be unlawful discrimination within EC Council Directive 76/207 (OJ L39, 14.2.76, p 40); the fact that women members of the armed forces may be called upon to use weapons is therefore no justification, in itself, for discrimination against them). As to the concession made by the Ministry of Defence that its former practice of dismissing pregnant women was in breach of EC Council Directive 76/207 (OJ L39, 14.2.76, p 40) and as to the appropriate measure of damages see *Ministry of Defence v Cannock* [1995] 2 All ER 449, [1994] ICR 918, EAT; and DISCRIMINATION vol 13 (2007 Reissue) para 414. As to equal pay see note 7 supra.

14 As to the redress of complaints procedure see para 314 post. As to the Defence Council see para 2 ante.

UPDATE

4 Relationship between the Crown and members of the armed forces

NOTE 13--1975 Act s 85(5) repealed: Employment Equality (Sex Discrimination) Regulations 2005, SI 2005/2467. EC Council Directive 76/207 repealed (from 15 August 2009) and replaced (member state implementation measures to be in place by 15 August 2008) by European Parliament and EC Council Directive 2006/54 (OJ L204 26.7.2006 p 23): see DISCRIMINATION vol 13 (2007 Reissue) PARA 338.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/5. The status of the Queen's Regulations.

5. The status of the Queen's Regulations.

The Queen's Regulations are made under the royal prerogative for each of the three services¹. They are approved by Her Majesty the Queen and are issued by the Defence Council². Their purpose is to preserve good order and discipline in the services and they are not to be equated with guidance such as that given in the Highway Code or in pamphlets concerned with safety in factories³. The Queen's Regulations and any other document issued by an order of the Defence Council are admissible evidence of the giving of the instructions or the making of the regulations and of their contents⁴.

1 As to the royal prerogative see para 1 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq. The Queen's Regulations do not take the form of statutory instruments. At the date at which this volume states the law, the current Queen's Regulations were: the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997); the Queen's Regulations for the Army 1975; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999).

2 As to the Defence Council see para 2 ante.

3 *Barratt v Ministry of Defence* [1995] 3 All ER 87, [1995] 1 WLR 1217, CA (naval airman died after drinking and asphyxiating by inhaling own vomit). 'The purpose of Queen's Regulations and standing orders is to preserve good order and discipline in the service and to ensure that personnel remain fit for duty and while on duty obey commands and off duty do not misbehave bringing the service into disrepute ... in no sense are the regulations ... intended to lay down standards or to give advice in the exercise of reasonable care for the safety of the men when off duty drinking in the bars': *Barratt v Ministry of Defence* supra at 94 and 1223 per Beldam LJ.

4 Army Act 1955 s 198(6) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Air Force Act 1955 s 198(6) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); Naval Discipline Act 1957 s 64C (added by the Armed Forces Act 1996 s 5, Sch 1 para 63).

UPDATE

5 The status of the Queen's Regulations

TEXT AND NOTE 4--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/6. Authority for, and composition of, the naval forces.

6. Authority for, and composition of, the naval forces.

The only authority for the existence of the regular naval forces of the Crown is the royal prerogative, although enlistment and naval discipline are governed by statute and subordinate legislation¹. Apart from personnel², the main components of the forces are Her Majesty's ships and vessels³, aircraft⁴ and naval establishments⁵.

Those of Her Majesty's ships which are warships⁶ commanded by commissioned officers, and flying the white ensign⁷, are in international law completely immune from the jurisdiction of any foreign state while on the high seas⁸. The majority of Her Majesty's vessels are either Royal Fleet Auxiliaries⁹ or vessels of the Royal Maritime Auxiliary Service¹⁰. These vessels are not commissioned, do not fly the white ensign and are not commanded by commissioned officers. Their status for immunity purposes in international law appears to be the same as that of warships¹¹.

1 See paras 13, 16, 18 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 887. See also para 151 et seq post. The naval and marine reserves are raised under the authority of the Reserve Forces Act 1996 ss 1-3: see paras 13, 16 post.

2 As to personnel see para 7 post.

There are various responsibilities governed partly by statute and partly by prerogative. As to control over ports, harbours and foreshores see CROWN PROPERTY vol 12(1) (Reissue) para 242; PORTS AND HARBOURS vol 36(1) (2007 Reissue) para 614. As to blockade see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 817; PRIZE vol 36(2) (Reissue) para 814 et seq; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 410. As to explosives see generally EXPLOSIVES. As to prize law see PRIZE. In so far as any of these responsibilities were hitherto vested by any enactment (including any legislative instrument having effect under an enactment) in the Admiralty, they have now been transferred to the Secretary of State for Defence: see the Defence (Transfer of Functions) Act 1964 s 1(2); and para 2 ante.

3 In the Naval Discipline Act 1957, 'Her Majesty's ships' means commissioned ships flying the white ensign, and 'Her Majesty's vessels' means ships and vessels, other than Her Majesty's ships, engaged in the naval service of Her Majesty, whether belonging to Her Majesty or not; but neither of these expressions includes ships or vessels of a Commonwealth country (see para 20 note 7 post) or maintained by a colony, other than ships or vessels placed at the disposal of the Defence Council or of Her Majesty for general service in the Royal Navy: s 132(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to references to Her Majesty's ships in the Army Act 1955 and the Air Force Act 1955 see para 21 note 13 post. See also note 6 infra. As to the meaning of 'Commonwealth country' see para 20 note 6 post. As to the meaning of 'colony' see para 20 note 4 post. As to the Defence Council see para 2 ante. References in whatever terms in the Naval Discipline Act 1957 to ships, vessels or boats, or activities or places connected with them, include references to hovercraft or activities or places connected with hovercraft: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1 Pt A. As to hovercraft see generally SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381 et seq.

Except where it is otherwise specially provided, the merchant shipping legislation does not apply to ships belonging to Her Majesty: see the Merchant Shipping Act 1995 s 308(1); and SHIPPING MARITIME LAW vol 93 (2008) PARA 20.

As to collisions, groundings and other navigational incidents see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 45.

4 For these purposes, 'Her Majesty's aircraft' means aircraft in the service of Her Majesty, whether belonging to Her Majesty or not, but does not include aircraft belonging to a Commonwealth country or to any colony other than aircraft placed at the disposal of the Defence Council or of Her Majesty for general service in the Royal Navy: Naval Discipline Act 1957 s 132(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). 'Aircraft' means any machine for flying, whether propelled by mechanical means

or not, and includes any description of balloon: Naval Discipline Act 1957 s 135(1). As to references to Her Majesty's aircraft in the Army Act 1955 and the Air Force Act 1955 see para 21 note 13 post.

5 'Her Majesty's naval establishments' means establishments under the control of the Secretary of State and maintained for any purpose of the naval service, whether within or without Her Majesty's dominions: Naval Discipline Act 1957 s 132(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). As to the Secretary of State see para 2 ante.

6 For the meaning of 'warship' for the purposes of international law see the United Nations Convention on the Law of the Sea (New York, 10 December 1982; Misc 11 (1983); Cmnd 8941) art 29; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 140. 'Warship' is not defined in the Naval Discipline Act 1957.

7 As to the right to fly ensigns see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 45; SHIPPING AND MARITIME LAW vol 93 (2008) PARA 231 et seq.

8 See the Convention on the High Seas (Geneva, 29 April 1958; TS 5 (1963); Cmnd 1929) arts 8, 23; the United Nations Convention on the Law of the Sea (1982) art 95; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 151. As to the legal position of warships within the territorial waters of a coastal state see the Convention on the Territorial Sea and the Contiguous Zone (Geneva, 29 April 1958; TS 3 (1965); Cmnd 2511) art 23; the United Nations Convention on the Law of the Sea (1982) arts 30-32; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 138, 140. For a consideration of the legal basis for the immunity of a warship from the jurisdiction of a coastal state whose ports or waters the warship enters see *Chung Chi Cheung v R* [1939] AC 160 at 167-168, 175-176, [1938] 4 All ER 786 at 789-790, 794-795, PC, per Lord Atkin.

9 Royal Fleet Auxiliaries are tankers or replenishment, stores and support ships manned by mercantile marine officers and men. They are exempt from the provisions of the merchant shipping legislation (see SHIPPING AND MARITIME LAW), but by Order in Council they are registered under the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 16) for the purposes of inspection and to bring their crews within the provisions relating to discipline, pay and conditions of engagement: see the Order in Council making Regulations as to the Registration as British Ships of Vessels in the Service of the Admiralty 1911, SR & O 1911/338 (amended by the Defence (Transfer of Functions) (No 2) Order 1964, SI 1964/489, art 2, Schedule Pt I). See also note 3 supra.

10 The Royal Maritime Auxiliary Service comprises vessels necessary for the support of the fleet, other than Royal Fleet Auxiliaries, and includes experimental trials vessels, ocean tugs, mooring and salvage vessels, and degaussing vessels. They are manned by civil servants. These vessels are not registered, and they are exempt from the merchant shipping legislation. See also note 3 supra.

11 See the Convention on the High Seas (1958) art 9; the United Nations Convention on the Law of the Sea (1982) art 32; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 138.

UPDATE

6 Authority for, and composition of, the naval forces

NOTES 4, 5--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/7. Personnel of the naval forces.

7. Personnel of the naval forces.

'Her Majesty's naval forces' means: (1) the Royal Navy; (2) the naval reserve forces¹; (3) such of the marine forces², and of the naval forces of a Commonwealth country³ or those raised under the law of a colony⁴, as are for the time being subject to the Naval Discipline Act 1957⁵. The Queen Alexandra's Royal Naval Nursing Service (QARNNS) was previously a separate service but was incorporated into the Royal Navy on 1 April 2000.

Where any emergency has arisen and an order has been made⁶ for the transfer of the management and control of Her Majesty's Coastguard to the Secretary of State for Defence⁷, its officers and men are subject to the Naval Discipline Act 1957⁸.

1 'Naval reserve forces' means the Royal Fleet Reserve (except so far as it consists of marine officers and persons who were transferred from the Royal Marines or who enlisted as marines) and the Royal Naval Reserve: Naval Discipline Act 1957 s 132(8) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 13(b)).

2 'Marine forces' means the Royal Marines, the Royal Marines Reserve and the Royal Fleet Reserve so far as it consists of marine officers and persons who were transferred to that force from the Royal Marines or who enlisted as marines: Naval Discipline Act 1957 s 132(7) (substituted by the Armed Forces Act 1981 s 21; and amended by the Reserve Forces Act 1996 Sch 10 para 13(a)).

3 As to the meaning of 'Commonwealth country' see para 20 note 6 post.

4 As to the meaning of 'colony' see para 20 note 4 post.

5 Naval Discipline Act 1957 s 132(5) (amended by the Armed Forces Act 1976 s 4, Sch 2 para 4; the Armed Forces Act 1981 s 28(2), Sch 5 Pt I; the Armed Forces Act 1996 s 35(2), Sch 7 Pt III; and the Armed Forces Act 2001 ss 34, 38, Sch 6 Pt 5 para 24, Sch 7 Pt 6).

6 Ie under the Coastguard Act 1925 s 2(1) (as amended): see para 181 post.

7 As to the Secretary of State see para 2 ante.

8 See the Coastguard Act 1925 s 2(1) (amended by the Naval Discipline Act 1957 s 137(1), Sch 6); and the Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 6(1), Sch 2 para 1. See further para 181 post.

UPDATE

7 Personnel of the naval forces

TEXT AND NOTES--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

TEXT AND NOTES 6-8--Coastguard Act 1925 s 2 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/8. Authority for, and composition of, the army.

8. Authority for, and composition of, the army.

The maintenance of a standing army¹ within the realm in times of peace without the consent of Parliament was declared to be illegal by the Bill of Rights². Since that time a standing army has continued to be maintained only by virtue of the renewal of parliamentary sanction from year to year³.

The army consists⁴ of the regular forces⁵ at home and abroad, and the reserve land forces⁶, which include the Army Reserve and the Territorial Army⁷. The Ulster Defence Regiment and the Home Guard no longer exist as separate entities of the British Army⁸. However, a member of the regular forces may restrict his service to Northern Ireland, or to a particular area⁹.

Orders and regulations may be made by or on behalf of the Crown concerning matters relating to any or all of the parts of the army¹⁰.

1 The term used in the Army Act 1955 is 'military forces': see s 225(1) (definition of 'regular forces'); and para 191 post. See also note 5 infra. As to the application of the Army Act 1955 to members of a military force raised under the law of a colony see para 10 post.

2 See the Bill of Rights (1688) s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 883.

3 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 883-884. As to the annual renewal of the Army Act 1955 see para 3 ante. The Army Act 1955 also applies, with modifications and in certain defined circumstances, to members of the reserve land forces (ie the Army Reserve and the Territorial Army): see para 310 post. The statute which provides authority for the maintenance of the reserve land forces (ie the Reserve Forces Act 1996) is, however, permanent until amended or repealed: see notes 4, 7, 9 infra; and para 17 post.

4 As to the composition of the army see the Queen's Regulations for the Army 1975 para 1.006(b).

5 For the meaning of 'regular forces' in the Army Act 1955 see para 191 post. As to the application of the Army Act 1955 to women's services see para 18 post. The Royal Marines are a separate corps of the regular forces: see the Army Act 1955 s 210(1); and paras 16, 182 et seq post.

6 As to the reserve forces see para 223 et seq post. Members of the reserve land forces (ie the Army Reserve and the Territorial Army) are subject to call out: see the Reserve Forces Act 1996 ss 1(2)(b), 50; and paras 232, 236 post. For the power of members of the reserve forces to enter into special agreements see s 28; and para 245 post. As to recall for service of officers and former servicemen see s 65; and para 246 post. As to liability for offences which may be committed by reservists see s 95 (see para 248 post) and for liability to military law see the Army Act 1955 s 211 (as amended) (see paras 27, 74, 310 post).

7 This name, which was in use prior to the enactment of the Reserve Forces Act 1966 s 1(1) (repealed), was reintroduced by the Reserve Forces Act 1982 s 1(1) and amendments to relevant acts were made accordingly. As to the Territorial Army see further para 223 et seq post. The Territorial Army no longer has a reserve division; the power to maintain one was granted by the Auxiliary Forces Act 1953 s 11(7) (repealed).

8 The Ulster Defence Regiment was abolished and amalgamated into the Royal Irish Regiment: see the Army Act 1992 s 1; and para 17 text and note 12 post. The Home Guard Act 1951 was repealed by the Reserve Forces Act 1996 s 131(2), Sch 11.

9 Armed Forces Act 1966 s 2(1)(i), (j) (s 2(1)(i) added by the Army Act 1992 s 2(1); and the Armed Forces Act 1966 s 2(1)(j) added by the Armed Forces Act 1996 s 2(1)). Although a person may have restricted his service to serve in a particular area he may be required to serve outside that area for a number of days in any year not exceeding the maximum provided by regulations: Armed Forces Act 1966 s 2(1)(k) (added by the Armed Forces Act 1996 s 2(1)).

10 With regard to the regular forces, this power continues to exist under the royal prerogative, as bounded by the particular statutory provision of the Army Act 1955, by virtue of the fact that the prerogative powers

preceded the statutory provisions and have not been abolished: see para 1 ante. The Queen's Regulations for the Army are made under this prerogative power. Additional statutory powers to make regulations for the regular forces relating to specific matters are conferred on the Defence Council by the Army Act 1955 s 22 and the Armed Forces Act 1966 s 2 (as amended): see para 14 post. For other parts of the army, which are dependent upon statute for their existence, the power to make orders and regulations is also statutory: see eg the Reserve Forces Act 1996 s 4; and para 225 et seq post. As to the Defence Council see para 2 ante.

UPDATE

8 Authority for, and composition of, the army

TEXT AND NOTES--Army Act 1955 replaced: Armed Forces Act 2006.

NOTE 8--Army Act 1992 repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTE 9--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/9. Authority for, and composition of, the air forces.

9. Authority for, and composition of, the air forces.

By statute, the Crown may raise and maintain an air force consisting of such numbers of personnel¹ as may from time to time be provided by Parliament, and may make orders with respect to all matters relating to the air force². However, many of the provisions as to such matters, in particular those concerning enlistment and terms of service and discipline, are now contained as respects the regular air force in the Air Force Act 1955³. As this Act is of the same temporary nature as the Army Act 1955, with the content of which it largely corresponds, the effective functioning of the regular air force is as dependent upon the annual renewal of parliamentary sanction as is the existence of a standing army in time of peace⁴.

The air forces of the Crown consist of the regular air force⁵, the Air Force Reserve⁶ and the Royal Auxiliary Air Force⁷. A member of the regular air force may restrict his service to Northern Ireland or to a particular area⁸.

The Crown has power to make orders signified under the hand of a Secretary of State⁹ with respect to the government, discipline, pay, allowances and pensions of the Royal Air Force, and with respect to all other matters and things relating to it¹⁰. The Crown and the Secretary of State are also empowered to make orders and regulations relating to the Air Force Reserve¹¹ and the Royal Auxiliary Air Force¹².

1 The number of persons called out under the Reserve Forces Act 1996 is not to be reckoned in the numbers authorised for the regular air force: see s 36(2); and para 232 post.

2 Air Force (Constitution) Act 1917 ss 1, 2(1). See also para 15 post. Subject to the provisions of a Crown order, the Defence Council may make regulations on any matter on which the Crown may make orders, but the administration of pensions other than service pensions is vested in the Secretary of State for Work and Pensions (previously the Minister of Pensions): s 2(3); Defence (Transfer of Functions) Act 1964 s 3(2), (6). See also para 275 et seq post. As to the Defence Council see para 2 ante. All orders and general regulations under the Air Force (Constitution) Act 1917 s 2 must be laid before Parliament as soon as may be after they are made: s 2(4). It is under s 2 that the Queen's Regulations and Defence Council instructions for the Royal Air Force are issued: see para 5 ante. As to pensions other than service pensions see generally SOCIAL SECURITY AND PENSIONS. As to service pensions see para 266 et seq post.

3 Some of the provisions of the Air Force Act 1955 apply also, in certain circumstances, to members of the reserve and auxiliary air forces: see para 310 post.

4 As to the duration, and procedure for the continuance in force, of the Air Force Act 1955 see para 3 ante.

5 For the meaning of 'regular air force' in the Air Force Act 1955 see para 206 post. It seems that the term 'Royal Air Force' has no statutory basis. The regular air force now includes women. See para 18 post.

6 As to the Air Force Reserve and its constituent parts see para 223 post.

7 As to the composition of the air forces see the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 2 para 20. There is no longer a reserve division of the Royal Auxiliary Air Force; the power to maintain one was formerly granted by the Auxiliary Forces Act 1953 s 11(7) (repealed). As to Commonwealth air forces see para 20 post. As to the application of the Air Force Act 1955 to members of an air force raised under the law of a colony see para 10 post.

8 Armed Forces Act 1966 s 2(1)(i), (j) (s 2(1)(i) added by the Army Act 1992 s 2(1); and the Armed Forces Act 1966 s 2(1)(j) added by the Armed Forces Act 1996 s 2(1)). Although a person may have restricted his service to serve in a particular area he may be required to serve outside that area for a number of days in any year not exceeding the maximum provided by regulations: Armed Forces Act 1966 s 2(1)(k) (added by the Armed Forces Act 1996 s 2(1)).

9 As to the Secretary of State see para 2 ante.

10 Air Force (Constitution) Act 1917 s 2(1), (2). This power of the Crown extends to the making of orders relating to any matter which by the Act is authorised to be prescribed, or expressed to be subject to orders or regulations: s 2(1). As to the making by the Defence Council of regulations with respect to matters as to which the Crown is authorised to make orders see note 2 supra.

11 See the Reserve Forces Act 1996 ss 62, 130. See also paras 17 note 15, 223, 225 post.

12 See *ibid* s 117.

UPDATE

9 Authority for, and composition of, the air forces

TEXT AND NOTES--Air Forces Act 1955 replaced: Armed Forces Act 2006.

TEXT AND NOTE 8--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTES 9, 10--Air Force (Constitution) Act 1917 s 2(1) amended: Armed Forces Act 2006 Sch 16 para 13, Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/10. Application of service law to the armed forces of colonies and British overseas territories.

10. Application of service law to the armed forces of colonies and British overseas territories.

A force raised under the law of a colony¹, or a territory under the protection of the Crown or administered by the United Kingdom government as a trust territory², is ordinarily under the control of the legislature of that colony or territory³. However, where such a force is serving with, or otherwise acting as a part of or with, any portion of Her Majesty's military or air forces raised in the United Kingdom, and the law of the territory in which the force was raised does not provide for the government and discipline of the force and its members, the Army Act 1955 or the Air Force Act 1955, as the case may be, applies to them, subject to such modifications as may be specified by the officer commanding the forces in question⁴; and any member of such a force who, outside the territory in which the force was raised, is attached to or otherwise serving as part of Her Majesty's military or air forces raised in the United Kingdom is subject to military or air force law as if he were a member of the regular forces⁵ or of the regular air force⁶, as the case may be⁷. Similarly, the Naval Discipline Act 1957 applies to members of a force raised under the law of a colony, protectorate or trust territory who are ordered to be trained or exercised on board any of Her Majesty's ships or in any of Her Majesty's naval establishments, or who are placed at Her Majesty's disposal for general service in the Royal Navy⁸.

These provisions do not apply to the forces of Commonwealth countries, or to their members⁹.

1 As to the meaning of 'colony' see para 20 note 4 post.

2 Note that no protectorates or United Kingdom trust territories now remain. See COMMONWEALTH vol 13 (2009) PARA 708. See also para 20 note 5 post. As to the meaning of 'United Kingdom' see para 20 notes 1-2 post.

3 See the Army Act 1955 ss 207(1), 217; the Air Force Act 1955 ss 207(1), 215; and the Naval Discipline Act 1957 ss 115(1), 127(1), (2).

4 Army Act 1955 ss 207(2), 217(1); Air Force Act 1955 ss 207(2), 215(1).

5 For the meaning of 'regular forces' see para 191 post.

6 For the meaning of 'regular air force' see para 206 post.

7 See the Army Act 1955 ss 207(3), 217(1) (s 207(3) amended by the Army and Air Force Act 1961 s 35); and the Air Force Act 1955 ss 207(3), 215(1) (s 207(3) amended by the Army and Air Force Act 1961 s 35).

8 See the Naval Discipline Act 1957 ss 111(6), 115(2), 127(1), (2) (s 111(6) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). For the meaning of 'Her Majesty's ships' see para 6 note 3 ante; and for the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

9 As to visiting forces of Commonwealth countries see para 11 post.

UPDATE

10 Application of service law to the armed forces of colonies and British overseas territories

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the power of British overseas territories to apply the Armed Forces Act 2006, see s 357.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/(i) Constitutional Authority/11. Visiting forces of the Commonwealth.

11. Visiting forces of the Commonwealth.

Members of the forces of certain Commonwealth countries¹, and of the Republic of Ireland, are subject to the Naval Discipline Act 1957 or to military or air force law, as the case may be, when they are attached under the provisions of the Visiting Forces (British Commonwealth) Act 1933 to any of Her Majesty's forces raised in the United Kingdom, or in any colony, protectorate or United Kingdom trust territory to which the Act has been extended by Order in Council². In such circumstances, the personnel so attached have the like powers of command and punishment over the members of the force to which they are attached as if they were members of that force of relative rank³. The application of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, as the case may be, to such attached personnel may, however, be made subject to such exceptions, adaptations and modifications as may be specified by Order in Council⁴. The Visiting Forces (British Commonwealth) Act 1933 also makes special provision as to the powers of command and punishment exercisable by members of a Commonwealth or Irish force which is serving together or acting in conjunction with a home force or a colonial force⁵.

When any part of the forces of certain Commonwealth and other countries⁶ is present in the United Kingdom, or in any other territory specified for the purpose by Order in Council⁷, at the invitation of Her Majesty's government in the United Kingdom or in the particular specified territory, that part of those forces is a visiting force for the purposes of Part I of the Visiting Forces Act 1952⁸, and may have applied to it and to its members and their civilian component many of the powers exercisable over and by the armed forces raised in the United Kingdom or in the other specified territory⁹. In addition, jurisdiction over the members of the visiting force is granted to the service courts and authorities of its country of origin, and complementary restrictions are placed on the jurisdiction of the courts of the United Kingdom, or of the other specified territory in which the visiting force is present, over its members¹⁰.

1 As to the Commonwealth countries referred to see para 255 note 1 post.

2 See the Visiting Forces (British Commonwealth) Act 1933 ss 4(3), 5(2), (3), 6 (s 4(3) amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 3, Sch 2 para 9(2)); the Army Act 1955 s 206; the Air Force Act 1955 s 206; and the Naval Discipline Act 1957 s 114(1). See further paras 135, 255 post. As to the meaning of 'United Kingdom' see para 20 notes 1-2 post.

3 Visiting Forces (British Commonwealth) Act 1933 s 4(3) (as amended: see note 2 supra). See further para 255 post.

4 Ibid s 4(3) proviso.

5 See ibid s 4(4) (amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt I). See also para 255 post. For the meaning of 'home force' see para 255 note 3 post.

6 As to the countries referred to see para 138 post.

7 As to the specified territories see para 139 post.

8 See the Visiting Forces Act 1952 s 12(1) (as amended); and para 140 post. As to Pt I (ss 1-12) (as amended) see para 137 et seq post.

9 See ibid ss 8, 10; and paras 141-142 post.

10 See ibid ss 2-4, 6 (ss 2, 3 as amended); and para 143 et seq post.

UPDATE

11 Visiting forces of the Commonwealth

TEXT AND NOTES 1-4--Visiting Forces (British Commonwealth) Act 1933 s 4(3) further amended: Armed Forces Act 2006 Sch 16 para 14.

NOTE 2--Visiting Forces (British Commonwealth) Act 1933 s 6 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/ (ii) The Legislation/12. Legislation and the prerogative.

(ii) The Legislation

12. Legislation and the prerogative.

Although the terms of the relationship between the Crown and the armed forces are based on prerogative, much of the former discretionary and absolute authority exercised under the prerogative in relation to those forces is now displaced by statutory provisions¹.

¹ See paras 1 ante, 13 et seq post. Nothing in the Crown Proceedings Act 1947 Pt I (ss 1-12) (as amended) (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 102 et seq) is to extinguish or abridge any powers or authorities exercisable by virtue of the prerogative or conferred on the Crown by any statute, and, in particular, nothing in Pt I (as amended) is to extinguish or abridge any powers or authorities exercisable by the Crown, whether in time of peace or war, for the purpose of the defence of the realm or of training, or maintaining the efficiency of, any of the armed forces of the Crown: s 11(1). As to the Crown in relation to the armed forces see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 883 et seq. As to Crown liability in tort see para 55 post.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/ (ii) The Legislation/13. Royal Navy legislation.

13. Royal Navy legislation.

Although the existence of the Royal Navy depends on prerogative, enlistment and service in it are governed by regulations¹. Discipline is governed mainly by the Naval Discipline Act 1957².

The existence of the naval reserve forces is authorised by the Reserve Forces Act 1996³, which also makes provision for enlistment and the terms of service in those forces⁴. Any officer or rating of any of the naval reserve forces is subject to the Naval Discipline Act 1957 while: (1) in permanent service on call out under any provision of the Reserve Forces Act 1980⁵, the Reserve Forces Act 1996 or any other call out obligation of an officer; (2) in full time service under a commitment entered into under the Reserve Forces Act 1996⁶; (3) undertaking any training or duty (whether in pursuance of an obligation or not); or (4) serving on the permanent staff of the Royal Fleet Reserve or the Royal Naval Reserve⁷.

The authority for the pay and pensions of the naval forces is the Naval and Marine Pay and Pensions Act 1865⁸, and for the naval reserve forces is the Reserve Forces Act 1996⁹.

1 See the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834 (amended by SI 1983/897; SI 1985/2003; SI 1986/2074; SI 2000/1771; SI 2001/1521), made under the power conferred by the Armed Forces Act 1966 s 2 (as amended). As to the royal prerogative see para 1 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq.

2 As to the duration and periodical renewal of the Naval Discipline Act 1957 see para 3 ante. Nothing in the Act takes away, abridges or prejudicially affects any right, power or prerogative of Her Majesty in right of her Crown or in right of her Office of Admiralty: s 138(1). In theory, this provision preserves the prerogative of the Crown to legislate for the navy. Any reference in any enactment to the Naval Discipline Act (1866) or to any provision of that Act is to be construed as or as including a reference to the Naval Discipline Act 1957 or the corresponding provision of it: s 137(2).

3 See the Reserve Forces Act 1996 s 1(1), (2)(a); and para 173 post.

4 See *ibid* Pt II (ss 9-21) (as amended); and para 229 post.

5 The Reserve Forces Act 1980 ss 48, 55, 138 (as amended), ss 140, 151, 156 (as amended), ss 157, 158 remain in force: see further para 223 et seq post.

6 *Ie* under the Reserve Forces Act 1996 s 24: see para 242 post.

7 Naval Discipline Act 1957 s 111(3) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 12). The expression 'actual service' is largely obsolescent: see eg the Reserve Forces Act 1980 s 157(1), Sch 8 para 6. It no longer remains in the Naval Discipline Act 1957 s 111(3) (as substituted).

8 As to naval pay and pensions generally see para 162 et seq post.

9 See the Reserve Forces Act 1996 ss 7, 8; and para 223 post.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI

2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

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14. Army legislation; the regular forces.

Since 1688, the authority for the existence of the regular forces¹ has derived from the consent of Parliament, declared by statute and annually renewed². The statutes by which that consent is given are the Army Act 1955³ and the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955⁴. The Army Act 1955 provides for the discipline of the regular forces, and for conditions of enlistment, service and discharge and other matters relating to the maintenance and administration of those forces, and regulates generally, so far as is laid down by statute, the relationship between civilians and members of the regular forces⁵. The Defence Council⁶ may make regulations⁷ for carrying into effect the statutory provisions relating to enlistment, terms of service and discharge⁸.

1 For the meaning of 'regular forces' see para 191 post. As to the legislation relating to the reserve and auxiliary forces see para 17 post.

2 See paras 3, 8 ante.

3 The Army Act 1955 came into operation on 1 January 1957. As to its original duration and subsequent periodical renewal see para 3 ante.

4 The main purpose of the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 was to provide for the transitional situation arising from the repeal of the Army Act 1881 and the Air Force Act (1917) and their replacement by the Army Act 1955 and the Air Force Act 1955. Consequently, most of the provisions of the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 are either spent or repealed. However, the provisions of s 2, Sch 1 (as amended) are still of importance as they provide for the continuance in force, as though made under the Acts of 1955, of enlistments and engagements made under the former Acts and still current when the Acts of 1955 came into force; and they provide for the terms of service and entitlements of persons whose service spans the periods covered by both the old and new Acts: see the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 Sch 1 paras 1, 6, 7(1), (2), (3)(a), 8, 9, 11, 13.

5 See generally paras 27 et seq, 191 et seq post.

6 As to the Defence Council see para 2 ante.

7 Any power conferred by the Army Act 1955 to make provision by regulations, rules or other instrument includes power to make such provision for specified cases or classes of cases, and to make different provision for different classes of cases, and to define classes of cases: s 225(3). Any power conferred by the Act to make an order is to be construed as including power to vary or revoke the order: s 225(4). The Queen's Regulations for the Army 1975, however, are made under prerogative powers: see para 8 note 10 ante.

8 Army Act 1955 s 22(1) (amended by the Armed Forces Act 1996 s 4(1); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Prior to the amendments noted, the power to make regulations under the Army Act 1955 s 22(1) was not exercisable by statutory instrument and such regulations are accordingly not recorded in this work. The power to make such regulations is now exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 22(2) (added by the Armed Forces Act 1996 s 4(1)). Powers to make regulations by statutory instrument as to enlistment and terms of service in the regular forces are conferred on the Defence Council by the Armed Forces Act 1966: see s 2 (amended by the Armed Forces Act 1976 s 2; the Army Act 1992 s 2(1), (2); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III). See the Army Terms of Service Regulations 1992, SI 1992/1365 (as amended); and paras 198, 200-202 post. For provisions relating to part-time service in Northern Ireland see the Army Terms of Service (Part-Time Service in Northern Ireland) Regulations 1992, SI 1992/1366.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

UPDATE

14 Army legislation; the regular forces

NOTE 8--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17. SI 1992/1365 replaced: SI 2007/3382 (amended by SI 2009/1089). SI 1992/1366 revoked: SI 2008/1849.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/ (ii) The Legislation/15. Air force legislation; the regular air force.

15. Air force legislation; the regular air force.

The authority for the existence of the regular air force¹ is the Air Force (Constitution) Act 1917, which authorises the Crown to raise and maintain a force, to be called the Air Force², and also empowers Her Majesty and the Defence Council³ to make orders and regulations with respect to all matters relating to that force⁴. The terms of enlistment, service and discharge in, and the discipline of, the regular air force are governed by the Air Force Act 1955⁵ and the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955⁶. The Defence Council may make regulations⁷ for carrying into effect the statutory provisions relating to enlistment, terms of service and related matters⁸.

1 For the meaning of 'regular air force' see para 206 post. As to the legislation relating to the reserve and auxiliary air forces see para 17 post.

2 Air Force (Constitution) Act 1917 s 1.

3 As to the Defence Council see para 2 ante.

4 See the Air Force (Constitution) Act 1917 s 2(1), (3) (amended by virtue of the Defence (Transfer of Functions) Act 1964 s 3(2), (6)). It is under these provisions that the Queen's Regulations for the Royal Air Force (5th Edn, 1999), and orders relating to the pay, allowances and service pensions of the regular air force, are made: see para 9 note 2 ante.

5 The Air Force Act 1955 came into operation on 1 January 1957. As to its original duration and subsequent periodical renewal see para 3 ante.

6 As to the purpose of the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 see para 14 note 4 ante.

7 Any power conferred by the Air Force Act 1955 to make provision by regulations, rules or other instrument includes power to make such provision for specified cases or classes of cases, and to make different provision for different classes of cases, and to define classes of cases: s 223(3). Any power conferred by the Act to make an order is to be construed as including power to vary or revoke the order: s 223(4).

8 Ibid s 22(1) (amended by the Armed Forces Act 1996 s 4(1); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Prior to the amendments noted, the power to make regulations under the Air Force Act 1955 s 22(1) was not exercisable by statutory instrument and such regulations are accordingly not recorded in this work. Any power conferred by the Air Force Act 1955 Pt I (ss 1-23) (as amended) to make regulations is now exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 22(2) (added by the Armed Forces Act 1996 s 4(1)). Powers to make regulations by statutory instrument as to enlistment and terms of service in the regular air force are conferred on the Defence Council by the Armed Forces Act 1966: see s 2 (amended by the Armed Forces Act 1976 s 2; the Army Act 1992 s 2(1), (2); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III). See the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820 (as amended); and paras 210-212 post.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the

continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

UPDATE

15 Air force legislation; the regular air force

TEXT AND NOTE 4--Air Force (Constitution) Act 1917 s 2(1) further amended: Armed Forces Act 2006 Sch 16 para 13, Sch 17.

NOTE 8--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17. SI 1985/1820 replaced: Royal Air Force Terms of Service Regulations 2007, SI 2007/650 (amended by SI 2009/1089). See also the Air Force Act 1955 (Part 1) Regulations 2007, SI 2007/651 (amended by SI 2008/1585).

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16. Royal Marines legislation.

The Royal Marines are a separate corps of the regular forces authorised by the Army Act 1955¹ and their enlistment, terms of service and discharge are governed by that Act². They are subject to military law, but may also in certain circumstances be subject to the Naval Discipline Act 1957 concurrently with their subjection to military law³.

The maintenance of the Royal Marines Reserve is authorised by the Reserve Forces Act 1996⁴, which empowers the Secretary of State⁵ to make regulations for entry into that force and for its administration⁶, and authorises pay and pensions⁷. Warrant officers, non-commissioned officers and men of the Royal Marines Reserve are subject to the Army Act 1955 when called into actual service or being trained or exercised⁸. Officers of the Royal Marines Reserve are subject to the Army Act 1955 when in permanent service, in full-time service or undertaking any training or duty (whether in pursuance of an obligation or not) or when serving on the permanent staff of the army reserve⁹. In addition, all ranks of the Royal Marines Reserve are subject to the Naval Discipline Act 1957 when borne on the books of any of Her Majesty's ships or naval establishments¹⁰.

1 Army Act 1955 s 210(1). Although they are a military force, the government and control of the Royal Marines is almost entirely in the hands of the Defence Council through the Admiralty Board: see para 182 post. As to the Defence Council and the Admiralty Board see para 2 ante.

2 See *ibid* s 210(4) (as amended); and para 183 et seq post. The Defence Council may make regulations in connection with enlistment and terms of service in the Royal Marines: see ss 22, 210(4), Sch 7 Pt I (s 22 amended by the Armed Forces Act 1996 s 4(1); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I; the Army Act 1955 s 210(4) amended by the Navy, Army and Air Force Reserves Act 1959 s 2, Schedule; the Armed Forces Act 1971 s 75, Sch 3 para 4(1); the Armed Forces Act 1981 s 28(1), Sch 4 para 1(1); and the Reserve Forces Act 1996 s 131(1), Sch 10 para 5; the Army Act 1955 Sch 7 amended by the Army and Air Force Act 1961 s 16, Sch 1 para 5(2); the Armed Forces Act 1966 ss 13(1), 37(2), Sch 3 paras 1-3, Sch 5; the Armed Forces Act 1971 ss 63(3), 75, 77(1), Sch 3, Sch 4 Pt II; the Armed Forces Act 1976 ss 3(1), (2), 22(6), Sch 1 paras 1, 3, Sch 10; the Armed Forces Act 1981 ss 4(2), 28(2), Sch 5 Pt II; the Armed Forces Act 1996 ss 3(1), 4(2); the Reserve Forces Act 1996 ss 35(2), 126, Sch 7 para 3; the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I; and the Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 13). Such regulations are not statutory instruments and are not recorded in this work. Powers to make regulations by statutory instrument as to enlistment and terms of service in the regular forces, including the Royal Marines, are conferred on the Defence Council by the Armed Forces Act 1966: see s 2 (amended by the Armed Forces Act 1976 s 2; the Army Act 1992 s 2(1), (2); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III). For the terms of service of the Royal Marines see the Royal Marines Terms of Service Regulations 1988, SI 1988/1395 (as amended); and paras 183-184 post. The Army Terms of Service Regulations 1992, SI 1992/1365 (as amended) (see para 14 ante), do not apply to enlistment in the Royal Marines: see reg 2(3).

3 See paras 185-187 post.

4 Reserve Forces Act 1996 s 1(1), (2)(a).

5 As to the Secretary of State see para 2 ante.

6 See the Reserve Forces Act 1996 s 130; and paras 17 note 15, 189 post.

7 See *ibid* ss 7, 8; and para 189 post.

8 See the Army Act 1955 s 205(1)(g) (as amended), s 210(2)(b) (as substituted); and para 185 post.

9 See *ibid* ss 205(1)(eb), 210(2)(aa) (both as added); and para 185 post.

10 See the Naval Discipline Act 1957 s 112(1) (as amended); the Army Act 1955 s 210(3) (as amended); and para 185 post.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(1) LEGALITY AND REGULATION OF THE ARMED FORCES/ (ii) The Legislation/17. Legislation for the army and air force reserve and auxiliary forces.

17. Legislation for the army and air force reserve and auxiliary forces.

Generally¹, all the reserve and auxiliary forces of Her Majesty's land and air forces are raised and maintained under statutes which, unlike the Army Act 1955 and the Air Force Act 1955², have permanent force until amended or repealed. The principal statute is the Reserve Forces Act 1996³, which contains provisions affecting all the statutory reserve and auxiliary forces⁴. From this Act is derived the power to maintain the Army Reserve⁵, the Territorial Army⁶, the Air Force Reserve⁷ and the Royal Auxiliary Air Force⁸, and the Act also prescribes the conditions of enlistment and service, the obligations of members and the discipline of all these forces⁹. In so far as they are made applicable to the reserve and auxiliary forces, the Army Act 1955 and the Air Force Act 1955 also prescribe conditions of service, obligations and discipline¹⁰.

The Ulster Defence Regiment was maintained by virtue of the Reserve Forces Act 1980¹¹, but it ceased to exist on 1 July 1992¹². The Home Guard (as reconstituted after the 1939-1945 war) was established and maintained under the Home Guard Act 1951 but this Act was repealed by the Reserve Forces Act 1996¹³.

The Reserve Forces Act 1996 confers wide powers on the Crown, the Secretary of State and the Defence Council¹⁴ to make orders and regulations for the purpose of implementing the provisions of that Act¹⁵, and these orders and regulations must be made by statutory instrument¹⁶.

1 The Regular Army Reserve of Officers is maintained under the royal prerogative. As to the royal prerogative see para 1 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq.

2 See para 3 ante.

3 The Reserve Forces Act 1996 came into force on 1 April 1997 (see the Reserve Forces Act 1996 (Commencement No 1) Order 1997, SI 1997/305, art 2(1)) and is a consolidating Act. It replaces and repeals most of the previous Acts relating to the reserve and auxiliary forces (eg the Army Reserve Act 1950; the Auxiliary Forces Act 1953; and the Reserve Forces Act 1980), but orders and regulations made under repealed Acts were saved: see the Reserve Forces Act 1980 s 157(1), Sch 8 para 10, Sch 10.

At the date at which this volume states the law the repeal of the following provisions of the Reserve Forces Act 1980 was not yet in force: ss 10, 11, 13(2)-(4), 16, 17, 18(1), (2), 19, 20(1), 21, 22, 24-26, 28, 29, 30(1), (2), 31, 32, 34(1)-(3), 35, 36, 38, 39(1)(a), (b), 40-42, 44, 47, 50, 57, 58, 63, 67, 69, 70, 83(1), (2), 87, 93, 100, 101, 120, 139(1), 141-144, 145(1)(b), (2), 146(1)(b), (2), 154(1), 155, Sch 2, Sch 8 paras 1, 4, 5(1), (3), 6-8, 10-15, 16(2), (3), (5)-(10), 17, 19, 20: see the Reserve Forces Act 1996 (Commencement No 1) Order 1997, SI 1997/305. For transitional provision see the Reserve Forces Act 1996 ss 128, 130, Sch 8; and the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306.

4 The Reserve Forces Act 1996 extends to the reserves of the naval and marine forces: see paras 13, 16 ante. The Reserve Forces Act 1996, except so much of it as relates to the Royal Fleet Reserve and the Royal Marines Reserve, applies to women as it applies to men: s 2(4).

5 See *ibid* s 1(1), (2)(b); and para 223 et seq post.

6 See *ibid* s 1(1), (2)(b); and para 223 et seq post.

7 See *ibid* s 1(1), (2)(c); and para 223 et seq post.

8 See the Reserve Forces Act 1996 s 1(1), (2)(c); and para 223 et seq post.

9 See generally para 225 et seq post.

10 As to the application of the Army Act 1955 to members of the Army Reserve and the Territorial Army see s 205(1)(e) (as substituted), s 205(1)(ea) (as added), ss 205(1)(g), (h), 211 (as amended); and paras 247, 310 post. As to the application of the Air Force Act 1955 to members of the Air Force Reserve and the Royal Auxiliary Air Force see ss 205(1)(a)-(ff), (h), (i), 210 (as amended); and paras 247, 310 post.

11 See the Reserve Forces Act 1980 s 7 (repealed); and para 227 post.

12 Army Act 1992 ss 1(1), 5. Provision was made for the transfer of members of the regiment to other corps, and the conditions of service remain the same as before the commencement of the Act except that they do not include conditions restricting to Northern Ireland any requirement as to training: s 1(1), (2). As to regulations relating to terms and conditions of service etc see s 2 (amended by the Reserve Forces Act 1996 s 131(1), Sch 10 para 23). As to modifications to enactments relating to the Ulster Defence Regiment see the Army Act 1992 s 3 (amended by the Reserve Forces Act 1996 s 131(2), Sch 11). As to expenses see the Army Act 1992 s 4.

13 See the Reserve Forces Act 1996 Sch 11.

14 As to the Secretary of State and the Defence Council see para 2 ante.

15 As to the making of orders and regulations in relation to the army and air force reserves under the Reserve Forces Act 1996 see s 130; and para 225 note 3 post. Regulations made under s 130 may make modifications of any enactment contained in the Reserve Forces Act 1996 or in any other Act, and must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 130(2).

16 See note 15 supra.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

17 Legislation for the army and air force reserve and auxiliary forces

NOTE 12--Army Act 1992 repealed: Armed Forces Act 2006 Sch 17.

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18. Women's services legislation.

All the women's services administered by the Defence Council¹ are part of the armed forces of the Crown, and the relevant statutes are adapted as necessary to complete the assimilation of these services with the forces in or with which their members serve². Formerly, women were able to serve in women's services associated with the navy but they are now integrated fully into Her Majesty's naval forces³, and the Naval Discipline Act 1957 applies to women serving in the naval forces in the same way as it does to men⁴. The power to raise and maintain land and air forces of or consisting of women⁵ is contained in the Army and Air Force (Women's Service) Act 1948⁶. The women's services have been assimilated with the military and air forces⁷, and both the Army Act 1955 and the Air Force Act 1955 apply with modifications to women⁸.

The provisions of the Equal Pay Act 1970 requiring equal treatment for men and women in the same employment⁹ apply to service by a woman in any of the armed forces as they apply to employment by a private person¹⁰.

1 As to the Defence Council see para 2 ante.

2 See the Armed Forces Act 1981 s 20(1), Sch 3 Pts I, II. See also para 40 note 1 post. As to women in the reserve forces see the Reserve Forces Act 1996 s 2(4). As to the reserve forces see para 223 et seq post.

3 There was formerly a Women's Royal Naval Service, but there is no longer a separate women's service. The Queen Alexandra's Royal Naval Nursing Service is now open to both men and women, and is not a separate service but is incorporated into the Royal Navy as a branch of that service. See the amendments made to the Naval Discipline Act 1957 by the Armed Forces Act 1996 s 35(2), Sch 7 Pt 3; and the Armed Forces Act 2001 ss 34, 38, Sch 6 Pt 5 para 23, Sch 7 Pt 6.

4 See the Naval Discipline Act 1957 s 111(1), (2) (amended by the Armed Forces Act 1996 Sch 7 Pt 3; and the Armed Forces Act 2001 Sch 6 Pt 5 para 23, Sch 7 Pt 6). This refers only to officers and ratings.

5 The women's services were the Queen Alexandra's Royal Army Nursing Corps, the Princess Mary's Royal Air Force Nursing Service and the Women's Royal Air Force.

6 See the Army and Air Force (Women's Service) Act 1948 ss 1, 2. As to the modification and adaptation of certain enactments relating to women who are members of forces raised under the Army and Air Force (Women's Service) Act 1948 see the Army and Air Force (Women's Service) (Adaptation of Enactments) Order 1949, SI 1949/61; and the Reserve Forces Act 1980 s 156(3) (amended by the Armed Forces Act 1981 s 20(3)).

7 See eg the Armed Forces Act 1981 s 20(1), Sch 3 (amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 Pt 5 para 28, Sch 7 Pt 6).

8 See the Army Act 1955 s 213 (amended by the Armed Forces Act 1971 ss 77(1), 78(4)(a), Sch 4 Pt I; and the Armed Forces Act 1986 ss 14, 16(2), Sch 2); and the Air Force Act 1955 s 211 (amended by the Armed Forces Act 1971 Sch 4 Pt I). As to the subjection of members of Her Majesty's military or air forces to the Naval Discipline Act 1957 when attached to the naval forces see s 113 (amended by the Armed Forces Act 1976 s 22(6), Sch 2 para 3, Sch 10).

9 See the Equal Pay Act 1970 s 1 (as amended): see DISCRIMINATION vol 13 (2007 Reissue) para 424 et seq.

10 See ibid s 7A (added by the Armed Forces Act 1996 s 24(1); and amended by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)). See further DISCRIMINATION vol 13 (2007 Reissue) para 432.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

UPDATE

18 Women's services legislation

TEXT AND NOTE 6--Army and Air Force (Women's Service) Act 1948 repealed: Armed Forces Act 2006 Sch 17.

NOTE 10--1970 Act s 7A modified: see the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005, SI 2005/1923, regs 7, 8, 10-15. 1970 Act s 7A further amended: Employment Equality (Sex Discrimination) Regulations 2005, SI 2005/2467.

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19. Other sources of law affecting the armed forces.

In addition to the legislation in the form of Acts of Parliament or statutory instruments affecting the armed forces¹, there are many orders, regulations and directions made, by virtue of statutory authority, by service authorities at various levels, but not made by statutory instrument². Case law has the same authority in the practice of service tribunals as in the English legal system generally³.

¹ See para 12 et seq ante.

² Instruments in these forms are frequently made by the Secretary of State, the Defence Council, and by numerous service authorities. See eg the regulations made by the Defence Council pursuant to the Naval Discipline Act 1957 s 118(2), Sch 3 para 1 (as amended) (and see also the Army Act 1955 ss 204(1), 209(2), Sch 5 para 1 (as amended); and the Air Force Act 1955 ss 204(1), 209(2), Sch 5 para 1 (as amended)), defining the capacities of Crown employment which render civilians in such employment subject, under certain circumstances, to the Naval Discipline Act 1957 (or to military or air force law, as the case may be); and see para 311 post.

³ This statement is not based on any express statutory provision (cf, however, the Army Act 1955 s 99(1), (3) (as amended); and the Air Force Act 1955 s 99(1), (3) (as amended): see para 375 post), but on the existing practice of courts-martial, naval disciplinary courts and standing civilian courts. In army and air force courts-martial, rulings of the Judge Advocate General are accorded the degree of authority customarily accorded by a judge of first instance to a decision of another such judge. As to the practice in such cases see CIVIL PROCEDURE vol 11 (2009) PARA 91 et seq. As to courts-martial see para 448 et seq post (navy), and para 480 et seq post (army and air force).

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

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20. Territorial application of legislation.

The Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 apply to the United Kingdom¹, and, with certain modifications, to the Channel Islands and the Isle of Man². Certain provisions of each of those Acts apply, with modifications where necessary³, to colonies⁴ and to any territory under Her Majesty's protection or for the time being administered by Her Majesty's United Kingdom government under the trusteeship system of the United Nations⁵. Except where otherwise expressly provided, the forces of Commonwealth countries⁶ are not within Her Majesty's naval, military or air forces within the meaning of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955⁷.

By Order in Council, certain statutory provisions relating to the reserve and auxiliary forces may be applied, with appropriate modifications, to the Channel Islands and to the Isle of Man⁸.

1 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 3. In their application to Scotland and Northern Ireland, however, the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 are subject to certain modifications and adaptations: see generally the Army Act 1955 ss 214, 215 (both as amended); the Air Force Act 1955 ss 212, 213 (both as amended); and the Naval Discipline Act 1957 ss 123, 124 (both as amended). See also note 2 *infra*. A British ship on the high seas has been held not to be part of the United Kingdom for the purposes of what is now the Army Act 1955 s 70(4) (as amended) (see para 422 post): *R v Gordon-Finlayson, ex p An Officer* [1941] 1 KB 171, DC.

2 See the Army Act 1955 s 216(1)-(3) (s 216(1) substituted by the Armed Forces Act 1991 s 24(1)); the Air Force Act 1955 s 214(1)-(3) (s 214(1) substituted by the Armed Forces Act 1991 s 24(1)); and the Naval Discipline Act 1957 s 125(1), (2) (s 125(1) substituted by the Armed Forces Act 1991 s 24(2); and the Naval Discipline Act 1957 s 125(2) amended by the Armed Forces Act 1971 ss 35(2), 52(2); and by the Armed Forces Act 2001 s 38, Sch 7 Pt 4). References in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 to the United Kingdom are to be construed as including references to the Channel Islands and the Isle of Man (except those in the Army Act 1955 ss 119, 126, 127, 143, Pt IV (ss 154-176) (all as amended: see para 514 *et seq post*), the Air Force Act 1955 ss 119, 126, 127, 143, Pt IV (ss 154-176) (all as amended: see para 514 *et seq post*), and the Naval Discipline Act 1957 s 82A (as added: see para 425 post), s 88(3), (4) (as amended: see para 476 post)), subject to such modifications as Her Majesty may by Order in Council specify; and, where any such modification refers to any law for the time being in force in any of the Channel Islands or the Isle of Man, the modification may be expressed to have effect for all purposes of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 (and not only in the application of that Act to the Channel Islands or the Isle of Man, as the case may be): see the Army Act 1955 s 216(1)-(3) (s 216(1) as so substituted); the Air Force Act 1955 s 214(1)-(3) (s 214(1) as so substituted); and the Naval Discipline Act 1957 s 125(1), (2) (as so substituted and amended). References to a colony in the Army Act 1955 s 127 (as amended), the Air Force Act 1955 s 127 (as amended), and the Naval Discipline Act 1957 s 82A (as added) (see paras 479, 518 post), include references to the Channel Islands and the Isle of Man: Army Act 1955 s 216(3); Air Force Act 1955 s 214(3); Naval Discipline Act 1957 s 125(2) (as so amended).

As to the application of the Air Force Act 1955 generally to Guernsey, the Isle of Man and Jersey see respectively the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; and the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720. As to the application of the Army Act 1955 to those islands see the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; and the Army Act 1955 (Jersey) Order 1996, SI 1996/724. As to the application of the Naval Discipline Act 1957 to those islands see the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996, SI 1996/726; the Naval Discipline Act 1957 (Isle of Man) Order 1996, SI 1996/727; and the Naval Discipline Act 1957 (Jersey) Order 1996, SI 1996/728.

For the purposes of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, the Republic of Ireland is not to be regarded as a foreign country: Armed Forces Act 1966 s 19 (amended by the Statute Law

(Repeals) Act 1974). As to the status of the Republic of Ireland generally see COMMONWEALTH vol 13 (2009) PARA 728.

3 See eg the Army Act 1955 s 222; the Air Force Act 1955 s 220; the Naval Discipline Act 1957 s 126 (as amended); and paras 40, 63-64 post.

4 For the meaning of 'colony' in Acts passed after 1889 see STATUTES vol 44(1) (Reissue) para 1383. See also COMMONWEALTH vol 13 (2009) PARA 705. References to the law of a colony include, in relation to two or more colonies under a central legislature, references to law made by that legislature: Army Act 1955 s 217(2); Air Force Act 1955 s 215(2); Naval Discipline Act 1957 s 127(2).

5 Army Act 1955 s 217(1); Air Force Act 1955 s 215(1); Naval Discipline Act 1957 s 127(1)(a), (b). In each Act, references to Her Majesty's dominions are to be construed as including references to protectorates and trust territories: Army Act 1955 s 217(1); Air Force Act 1955 s 215(1); Naval Discipline Act 1957 s 127(1). The Naval Discipline Act 1957 also applies to any country or territory consisting of two or more colonies, protectorates or trust territories: s 127(1)(c). Note that no protectorates or United Kingdom trust territories remain. As to Her Majesty's dominions, protectorates and trust territories see COMMONWEALTH vol 13 (2009) PARAS 707-708.

6 In the Army Act 1955 and the Air Force Act 1955, 'Commonwealth force' means any of the naval, military or air forces of the following countries: Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Dominica, Republic of Cyprus, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Hebrides (now Vanuatu), New Zealand, Nigeria, Pakistan, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanganyika, Tanzania (including Zanzibar), Tonga, Trinidad and Tobago, Tuvalu, Uganda, Western Samoa, Zambia, Zimbabwe: see the Army Act 1955 s 225(1); and the Air Force Act 1955 s 223(1) (definition as amended and modified, in either case, by the respective independence Acts or modification of enactments orders relating to those countries; and amended by the Commonwealth Act 2002 s 2, Sch 2 para 1). The Naval Discipline Act 1957 refers to 'a force of any Commonwealth country', and in that Act 'Commonwealth country' means any of the countries specified above: see s 135(1) (as similarly amended and modified). As to the Commonwealth countries see generally COMMONWEALTH.

7 'Her Majesty's air forces', 'Her Majesty's military forces' or 'Her Majesty's naval forces, except where otherwise expressly provided, does not include any Commonwealth force and references to 'Her Majesty's forces' (except in the Army Act 1955 s 177 and the Air Force Act 1955 s 177 (see para 2 ante)) are to be construed accordingly: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1) (definition amended by the Armed Forces Act 1966 s 28; and the Armed Forces Act 1976 s 22(6), Sch 10).

8 See the Reserve Forces Act 1996 s 132(3); and the Reserve Forces Act 1980 s 158(3). As to the order that has been made see the Reserve Forces Acts 1980 and 1982 (Isle of Man) Order 1986, SI 1986/2026.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

20 Territorial application of legislation

NOTE 2--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

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21. Legislation applying service law to civilians.

Where any body of Her Majesty's naval forces¹, the regular forces² or the regular air force³ is on active service⁴, the disciplinary provisions of the Naval Discipline Act 1957⁵, the Army Act 1955⁶ or the Air Force Act 1955⁷, as the case may be, apply, with certain modifications⁸, to any person (not otherwise subject to service law) who is employed in the service of that body of those forces or of any portion or member of it, or who accompanies that body or any part of it⁹. Additionally, but subject to the same modifications, any persons who are not otherwise subject to service law, and who fall into any of certain categories¹⁰, are subject to certain of the disciplinary provisions of those Acts, whether or not the force in question is on active service, when they are within the limits of the command of any officer commanding any of Her Majesty's naval forces, or a body of the regular forces or of the regular air force, outside the United Kingdom¹¹.

Certain provisions of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, as the case may be, apply, with modifications prescribed by regulations made by the Defence Council¹², to persons (not otherwise subject to service law) who are embarked as passengers on board Her Majesty's ships or aircraft¹³.

The Naval Discipline Act 1957, the Army Act 1955, the Air Force Act 1955 and certain other statutes contain provisions creating offences which can be committed by civilians¹⁴.

1 For the meaning of 'Her Majesty's naval forces' see para 7 ante.

2 For the meaning of 'regular forces' see para 191 post.

3 For the meaning of 'regular air force' see para 206 post.

4 For the meaning of 'active service' see para 305 post.

5 Ie the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended): see para 302 et seq post.

6 Ie the Army Act 1955 Pt II (ss 24-143) (as amended): see para 302 et seq post.

7 Ie the Air Force Act 1955 Pt II (ss 24-143) (as amended): see para 302 et seq post.

8 As to these modifications see para 311 post.

9 Army Act 1955 s 209(1); Air Force Act 1955 s 209(1); Naval Discipline Act 1957 s 118(1), (4). See further para 311 post.

10 As to these categories see para 311 post.

11 See the Army Act 1955 s 209(2), Sch 5 (as amended); the Air Force Act 1955 s 209(2), Sch 5 (as amended); the Naval Discipline Act 1957 s 118(2), Sch 3 (as amended); and para 311 post. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

12 Such regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

13 Army Act 1955 s 208A (added by the Armed Forces Act 1971 s 72(1)); Air Force Act 1955 s 208A (added by the Armed Forces Act 1971 s 72(1)); Naval Discipline Act 1957 s 117 (amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 8; and by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

In the Naval Discipline Act 1957, 'ships' includes hovercraft: see para 6 note 3 ante. For the meaning of 'Her Majesty's aircraft' and 'Her Majesty's ships' in the Naval Discipline Act 1957 see para 6 notes 3-4 ante.

In the Army Act 1955 and the Air Force Act 1955, references to Her Majesty's aircraft or to Her Majesty's ships are references to aircraft or ships in Her Majesty's service, whether belonging to Her Majesty or not, but do not include references to aircraft or ships of any Commonwealth force (see para 20 notes 6-7 ante) other than aircraft or ships placed at Her Majesty's disposal for service with any of Her Majesty's forces: Army Act 1955 s 225(1A), (1B) (added by the Armed Forces Act 1966 s 27(2)); Air Force Act 1955 s 223(1A), (1B) (added by the Armed Forces Act 1966 s 27(2)). 'Ship' includes any description of vessel; and 'aircraft' means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1).

14 See eg the Army Act 1955 s 101 (as amended), the Air Force Act 1955 s 101 (as amended), and the Naval Discipline Act 1957 s 65 (as amended) (offences relating to the proceedings of courts-martial: see paras 467, 505 post); the Army Act 1955 s 192 (as amended), the Air Force Act 1955 s 192 (as amended), and the Naval Discipline Act 1957 s 97 (as amended) (assisting deserters or absentees: see para 43 post); the Army Act 1955 ss 195, 196 (both as amended), the Air Force Act 1955 ss 195, 196 (both as amended), and the Naval Discipline Act 1957 ss 98, 99 (both as amended) (unlawful purchase of stores or dealings in official documents: see para 48 post); and the Army Act 1955 s 193 (as amended), and the Air Force Act 1955 s 193 (as amended) (obstructing members of the regular forces or of the regular air force in the execution of their duty: see para 44 post).

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

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22. Legislation in respect of forces of other countries.

The Visiting Forces Act 1952 contains provisions¹ conferring certain privileges² and imposing certain obligations on members of any body, contingent or detachment of the forces³ of a country to which the provision in question applies⁴, while present in the United Kingdom (including United Kingdom territorial waters)⁵ on the invitation of Her Majesty's government in the United Kingdom (whereupon for the purposes of the Act the force becomes a 'visiting force')⁶. The countries to which a provision of the Act applies are the specified Commonwealth countries⁷ and such other countries as have been designated for the purpose by Order in Council⁸. Various powers exercisable under United Kingdom law in respect of its own forces and their members are also applied to visiting forces and their members, and certain immunities and privileges enjoyed by the home forces are extended to visiting forces⁹.

The International Headquarters and Defence Organisations Act 1964 provides for the application of certain provisions of the Visiting Forces Act 1952 to international headquarters and defence organisations designated under the International Headquarters and Defence Organisations Act 1964, which has the effect of approximating the legal position of these bodies to that of visiting forces¹⁰.

The Visiting Forces (British Commonwealth) Act 1933 makes provision as to the rights and duties of members of the forces of certain Commonwealth countries while they are attached to a home force, or while the visiting force of which they are members is serving together with, or acting in combination with, a home force¹¹.

The Geneva Conventions Act 1957 makes it an offence against the law of the United Kingdom for a person to commit a grave breach during an international armed conflict of any of the Geneva Conventions of 1949 or of the First Additional Protocol of 1977 to these Conventions¹².

1 See the Visiting Forces Act 1952 ss 2-9 (as amended); and para 138 et seq post.

2 Eg the conferring upon the service courts and service authorities of any country to which the Visiting Forces Act 1952 is applied of jurisdiction over the members of any visiting force of that country (see para 143 post); and the restriction of the trial of such members by United Kingdom courts (see paras 144-145 post).

3 Certain of the provisions of the Visiting Forces Act 1952 apply also to members of a civilian component of a visiting force: see para 141 post.

4 As to references to a country to which a provision of the Visiting Forces Act 1952 applies see the text to notes 7-8 infra; and para 138 post.

5 As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to United Kingdom territorial waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 121 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 31.

6 See the Visiting Forces Act 1952 s 12(1) (as amended); and para 140 post.

7 See para 138 post.

8 See para 138 post.

9 See para 142 post.

10 See the International Headquarters and Defence Organisations Act 1964 s 1(1), (2); and para 150 post.

11 See the Visiting Forces (British Commonwealth) Act 1933. Forces are deemed to be serving together or acting in combination if, and only if, they are declared to be so serving or so acting by order of the Defence Council: s 4(5) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the Visiting Forces (British Commonwealth) Act 1933 see further paras 11 ante, 135, 255 post.

12 The relevant conventions are set out in the Geneva Conventions Act 1957 s 1, 2, 7, Schs 1-5 (as amended): see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 416 et seq. See also the International Criminal Court Act 2001 s 51; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 454.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

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23. Provisions in relation to taxation and charities.

The income tax code for a member of the armed forces¹ is determined by the inspector of taxes or an authorised officer of the appropriate public department, and the income tax is deducted or repaid on the payment of any emolument by reference to tables prepared by the Commissioners of Inland Revenue, and to the appropriate code². Mess subscriptions are not deductible in assessing the pay of an officer³.

Where by royal warrant a unit of the Territorial Army, the Army Reserve, or the Royal Auxiliary Air Force is designated as the successor of a body of either of those reserves or of that force, which has been or is to be disbanded⁴, any charitable property⁵ held for the purposes of the body in question is required to be held for the corresponding purposes of the unit so designated⁶.

1 As to certain tax concessions applying to Crown property used for the purposes of the armed forces or enjoyed by members of those forces see para 34 post.

2 See generally INCOME TAXATION.

3 See *Lomax (Inspector of Taxes) v Newton* [1953] 2 All ER 801, 34 TC 558; *Griffiths (Inspector of Taxes) v Mockler* [1953] 2 All ER 805, 35 TC 135; and INCOME TAXATION vol 23(1) (Reissue) para 646.

4 References to disbandment of a body of a reserve force include references to its amalgamation with another unit or body: Reserve Forces Act 1996 s 120, Sch 5 para 2. As to the reserve forces see paras 173 et seq, 223 et seq post.

5 'Charitable property' means property belonging to a charity, and for this purpose 'charity' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARAS 1-2): Reserve Forces Act 1996 Sch 5 paras 2, 3(2). It has been held that a gift for the purpose of increasing the efficiency of the armed forces contains a sufficient element of public benefit to be a gift for purposes which are in law charitable: see CHARITIES vol 8 (2010) PARA 45.

6 Ibid Sch 5 paras 1, 3(1). See CHARITIES vol 8 (2010) PARA 196.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

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24. Births, deaths and marriages; wills.

There are special provisions for the registration of births, deaths and marriages occurring outside the United Kingdom¹ among, or among the families of, members of the armed forces, or specified categories of civilians connected with those forces or belonging to, or employed by, organisations concerned with the welfare of members of those forces². A marriage of a member of the armed forces serving in a foreign territory performed either by a chaplain serving with those forces or a duly authorised person is as valid as if performed in the United Kingdom with due observance of all the required forms, provided that prescribed conditions are complied with³.

The will of a member of the armed forces is in certain circumstances admissible to probate even though it does not comply with the formal statutory requirements, provided that the terms and validity of the will are established⁴.

1 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 See the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 s 1; and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) para 585. The Act also makes provision for the registration of births and deaths occurring in any part of the world on board Her Majesty's ships (including hovercraft) or aircraft, and of the death outside the United Kingdom of any person travelling in such an aircraft who is killed on the journey in consequence of an accident: see s 2; and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) para 584. For the procedure to be followed see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 61 paras J.6105-J.6107, Annex 61B; the Queen's Regulations for the Army 1975 paras J7.077-J7.088, J7.090, Annex F(j) (reproducing the Service Departments Registers Order 1959, SI 1959/406 (amended by SI 1988/1295; SI 2002/3122)); and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 28 paras J2148-J2151, App 37.

3 See the Foreign Marriage Act 1947; and the Foreign Marriages (Armed Forces) Order 1964, SI 1964/1000 (amended by SI 1965/137; SI 1990/2592). See further CONFLICT OF LAWS vol 8(3) (Reissue) paras 214-215 (marriages in service chapels in the United Kingdom).

4 See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) para 113 et seq.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

UPDATE

24 Births, deaths and marriages; wills

NOTE 2--SI 1959/406 further amended: SI 2005/3186, SI 2007/908, SI 2009/1736.

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25. Protection of civil interests of members of the armed forces; disablement.

There is statutory protection for many of the civil interests of persons who are performing, or have performed, certain categories of voluntary or, exceptionally, compulsory service in the armed forces¹. Such persons also enjoy statutory rights, in defined circumstances, to reinstatement in their former civil employment². Disabled persons who have served whole time in the armed forces, including the women's services, are entitled to preference in selection for the facilities provided³ for persons who are severely disabled⁴.

1 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951; and the Reserve Forces Act 1980 s 146 (repealed as from a day to be appointed by the Reserve Forces Act 1996 s 131(2), Sch 11: see para 17 note 3 ante). See further para 78 et seq post.

2 See the Reserve Forces (Safeguard of Employment) Act 1985 s 1(1) (as amended); and para 92 et seq post. See further EMPLOYMENT vol 39 (2009) PARA 107.

3 See the Disabled Persons (Employment) Act 1944 s 16 (as amended); and EMPLOYMENT vol 39 (2009) PARA 538.

4 See EMPLOYMENT vol 39 (2009) PARA 538.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

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26. Powers and duties of the armed forces affecting the civil population.

A member of the armed forces has the same obligations as any other citizen in dealing with crime and, in particular, civil disturbances, and is therefore bound to come to the aid of the civil power when his assistance is required, but in enforcing law and order he may only use force that is reasonable in the circumstances¹.

A service commander who receives a request from the civil power for assistance in order to maintain law, order and public safety is under a duty at once to inform his immediately superior service authority and the Ministry of Defence, but if, in very exceptional circumstances, a grave and sudden emergency arises which, in the opinion of the commander present, demands his immediate intervention to protect life and property, he must act on his own responsibility, and report the matter as soon as possible to the chief officer of police and to the service authorities².

At common law, it seems that a member of the armed forces may not lawfully be commanded to perform vital services (for example, to assist in maintaining supplies or services during an industrial dispute) unless the object of this command is the furtherance of some military purpose (for example, the running of a train carrying troops or military stores), or unless in a grave emergency the safety of the realm and of the government are endangered and to save the state the Crown has entrusted some vital service to military administration and control; in this latter case a proclamation issued under the royal prerogative, giving notice of the measures to be taken, would be desirable although not indispensable³.

Where a national danger is imminent or where a great emergency has arisen Her Majesty may authorise the call out of the reserve forces⁴ or the recall of former commissioned officers and servicemen⁵.

A general duty is laid upon every member of Her Majesty's armed forces⁶ to assist the Commissioners of Customs and Excise in the enforcement of the law in any matter relating to the performance of the commissioners' statutory duties⁷. In particular, every such member has the power of an officer appointed by the commissioners, or of a constable, to detain any person for, or on suspicion of, the commission of any offence for which he is liable to be detained under the Acts relating to customs and excise, to seize anything liable to forfeiture under those Acts and to search any vessel⁸. The person in command of any ship having a commission from Her Majesty or any foreign state which has on board any goods loaded outside the United Kingdom and the Isle of Man must, before they are unloaded, or when called upon by the proper officer, deliver to that officer an account of the goods in such form and manner as the commissioners may direct, and must answer any questions relating to the goods which may be put to him by that officer⁹.

A person in command of a vessel in a convoy is under a duty to obey, and may be made by force to obey, the orders of the person in command of the convoy or of the commanding officer of any of Her Majesty's ships escorting the convoy¹⁰.

1 As to the degree of force that may be used see the Criminal Law Act 1967 s 3; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 926. See also *R v Pinney* (1832) 5 C & P 254 at 270, 273-275.

2 See the Queen's Regulations for the Army 1975 para J11.0002; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 13 para J852; and the Queen's Regulations for the Royal Navy (Consolidated Edn,

1997) Ch 48 para J.4802. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

3 Opinion of the Law Officers, Sir Gordon Hewart and Sir Ernest Pollock, dated February 1920, adopting a ruling of the then Judge Advocate General, Sir Felix Cassel. This opinion was given shortly before the enactment of the Emergency Powers Act 1920. However, in most instances where the civil authorities require the assistance of the armed forces, action is now taken under statutory powers. As to this, and generally as to the Crown's power to deal with emergencies, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 820 et seq.

4 Reserve Forces Act 1996 s 52(1)(a). As to the reserve forces see paras 173 et seq, 223 et seq post. None of the terms 'national danger', 'imminent' or 'great emergency' is defined in the Act. Her Majesty may also make such an order in the event of an actual or apprehended attack on the United Kingdom: s 52(1)(b). For these purposes, the 'United Kingdom' includes the Channel Islands and the Isle of Man: s 52(9). As to the meaning of 'United Kingdom' generally see para 20 note 1 ante.

5 See ibid s 68. As to the call out of officers and soldiers of the part time Home Service in Northern Ireland see the Army Terms of Service (Part-Time Service in Northern Ireland) Regulations 1992, SI 1992/1366.

6 For the meaning of 'armed forces' in this context see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 925.

7 See the Customs and Excise Management Act 1979 s 11; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 925.

8 See ibid ss 138, 139, 163 (all as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 1152 et seq. These powers and duties date from the time of the Napoleonic wars, when smuggling was widespread and the powers of enforcement of the revenue authorities were weak. Today they are virtually in abeyance. As to the duty of a commanding officer of a ship in Her Majesty's service when the person detained is a member of the crew of that ship see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 1152.

9 See ibid s 36 (as amended); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) paras 957, 961.

10 See the Naval Discipline Act 1957 s 131 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See also SHIPPING AND MARITIME LAW vol 93 (2008) PARA 6.

UPDATE

12-26. The Legislation

The Armed Forces Act 2006 replaces the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955 with a single, harmonised system governing all members of the armed forces. For details of commencement, see SI 2007/1442, SI 2007/2913, SI 2008/1650, SI 2009/812, and SI 2009/1167. The Armed Forces, Army, Air Force and Naval Discipline Acts (Continuation) Order 2009, SI 2009/1752 provides for the continuation of the Armed Forces Act 2006 until 8 November 2010. For transitional provision, see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059.

UPDATE

26 Powers and duties of the armed forces affecting the civil population

NOTE 5--SI 1992/1366 revoked: SI 2008/1849.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/27. Parliamentary candidature and local government office.

(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES

27. Parliamentary candidature and local government office.

No member of the regular armed forces of the Crown¹ may, by issuing an address to electors or in any other manner, announce himself or permit himself to be announced as a candidate or prospective candidate for election to Parliament for any constituency². A member of the regular armed forces of the Crown³ is disqualified for membership of the House of Commons⁴, but an officer on the retired or emergency list of any of these forces, or who holds an emergency commission in any of them or belongs to any of their reserves of officers, is not disqualified as such⁵. A naval, army, marine or air force pensioner or former soldier recalled for service for which he is liable as such is not disqualified as a member of the regular armed forces, and neither is an Admiral of the Fleet, a Field Marshal or a Marshal of the Royal Air Force if he does not for the time being hold an appointment in the naval, military or air force service of the Crown⁶.

Officers of the regular forces or regular air force on the active list⁷ are ineligible for nomination or election as sheriff of any county or place⁸. Any member of the Territorial Army or the Royal Auxiliary Air Force may be nominated for or elected to such an office at any time⁹.

1 For these purposes, the 'regular armed forces of the Crown' means the Royal Navy, the regular forces as defined by the Army Act 1955 s 225 (as amended) (see para 191 post), the regular air force as defined by the Air Force Act 1955 s 223 (see para 206 post), Queen Alexandra's Royal Naval Nursing Service, and Voluntary Aid Detachments serving with the Royal Navy: see the Servants of the Crown (Parliamentary Candidature) Order 1960 arts 1(1), 4. This is an Order in Council, but not a statutory instrument, and is printed in the Queen's Regulations for the Army 1975 para 5.584 Annex I(J), the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para J1012A App 30, and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 66 para J.6604 Annex 66A. References in the Servants of the Crown (Parliamentary Candidature) Order 1960 to certain women's services have in effect been superseded by the Armed Forces Act 1981 s 20(1), Sch 3 Pt I (as amended): see para 18 ante. The prohibition extends also to officers of the Territorial Army in receipt of a consolidated allowance under the Regulations for the Territorial Army: see the Servants of the Crown (Parliamentary Candidature) Order 1960 art 1(1). It does not, however, apply to: (1) any officers on the retired or emergency list of any of the regular armed forces of the Crown, or holding an emergency commission in, or belonging to any reserve of officers of, any of those forces by reason of his being a member of them; or (2) a naval, army, marine or air force pensioner recalled for service for which he is liable as such by reason of his being a member of the regular armed forces of the Crown; or (3) an Admiral of the Fleet, a Field Marshal, or a Marshal of the Royal Air Force, if he does not for the time being hold an appointment in the naval, military, air or civil service of the Crown: see art 1(2)(a)-(c). Members of the Ulster Defence Regiment ceased to belong to that Regiment from 1 July 1992 but continue to be members of the armed forces: see the Army Act 1992 s 2; and para 17 text and note 12 ante.

2 See the Servants of the Crown (Parliamentary Candidature) Order 1960 art 1(1), 2. No member of the armed forces to whom the Order applies may announce himself in any manner as a candidate for election to the European Parliament, the Parliament of the Republic of Ireland or to any legislative assembly of the Commonwealth: see the Queen's Regulations for the Army 1975 para J5.584b; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para J1012A(2); and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 66 para J.6604(2). Any person to whom the Servants of the Crown (Parliamentary Candidature) Order 1960 applies and who desires to stand as a parliamentary candidate or who seeks election to the European Parliament, the Parliament of the Republic of Ireland or to any legislative assembly of the Commonwealth may apply for permission to retire voluntarily or resign or be granted a free discharge; approval will depend on the exigencies of the service, and an unsuccessful candidate will have no right to reinstatement: see the Queen's Regulations for the Army 1975 para J5.585; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para J1012B; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 66 para J.6605. Serving personnel may not accept membership of, or allow themselves to be nominated for election to, any local authority without the permission of the Ministry of Defence, or the Personnel Management

Agency (P1 Casework) (RAF), as the case may be: see the Queen's Regulations for the Army 1975 para J5.586a; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para J1013(1); and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 66 para J.6606(1). As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

3 For this purpose, 'the regular armed forces of the Crown' means the Royal Navy, the regular forces as defined by the Army Act 1955 s 225 (as amended) (see para 191 post) and the regular air force as defined by the Air Force Act 1955 s 223 (see para 206 post); House of Commons Disqualification Act 1975 s 1(3) (amended by the Armed Forces Act 2001 s 34, Sch 6 para 26). As to the effect of the Armed Forces Act 1981 s 20, Sch 3 Pt I in relation to the former women's services see para 18 ante.

The House of Commons Disqualification Act 1975 includes mention of members of the Ulster Defence Regiment, but this Regiment has been disbanded: see note 1 supra; and para 17 text and note 12 ante.

4 Ibid s 1(1)(c) (amended by the Armed Forces Act 1976 s 20(a)).

5 House of Commons Disqualification Act 1975 s 3(1)(a).

6 Ibid s 3(1)(b), (2) (s 3(1)(b) amended by the Reserve Forces Act 1996 s 131(2), Sch 10 para 15).

7 Officers on the active list are defined for the army by Royal Warrant and for the Royal Air Force by an order, neither of which are statutory instruments and are accordingly not set out in this work.

8 Army Act 1955 s 182; Air Force Act 1955 s 182.

9 Army Act 1955 s 211(6); Air Force Act 1955 s 210(6) (both substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 11).

UPDATE

27 Parliamentary candidature and local government office

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

NOTE 1--Army Act 1992 repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTES 3, 4--Disqualification Act 1975 s 1(1)(c), (3) further amended: Armed Forces Act 2006 Sch 16 para 67.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/28. Exemption from jury service.

28. Exemption from jury service.

Full-time serving members of any of Her Majesty's naval, military or air forces¹ who are summoned for jury service² are entitled, if they so wish, to be excused from jury service³. In addition, a person so excusable is under no obligation to attend in pursuance of a summons for jury service if his commanding officer certifies to the officer issuing the summons that it would be prejudicial to the efficiency of the service if the person were required to be absent from duty⁴.

These provisions apply not only to jury service in the High Court, the Crown Court and county courts⁵ but also to jury service at coroners' inquests⁶.

1 This includes women: see para 18 ante. The position in relation to members of the reserve forces is unclear. The Auxiliary Forces Act 1953 s 39(3), which formerly provided such an exemption, was repealed by the Reserve Forces Act 1980 s 157(1)(b), Sch 10, and not replaced. As to the reserve forces see paras 173 et seq, 223 et seq post.

2 See under the Juries Act 1974: see JURIES vol 61 (2010) PARA 812 et seq.

3 Ibid s 9(1), Sch 1 Pt III (amended by the Armed Forces Act 1976 s 22(6), Sch 10; and the Armed Forces Act 1981 s 28(2), Sch 5 Pt I). See further JURIES vol 61 (2010) PARA 806.

4 Juries Act 1974 Sch 1 Pt III. See JURIES vol 61 (2010) PARA 806.

5 See ibid ss 1, 23(2); and JURIES vol 61 (2010) PARA 804.

6 Coroners Rules 1984, SI 1984/552, r 51(1) (amended by SI 1999/3325). As to juries at coroners' inquests see further CORONERS vol 9(2) (2006 Reissue) para 978 et seq. The Coroners Act 1988 (see generally CORONERS) applies in relation to any premises in the United Kingdom under the control of the Secretary of State and allocated for the accommodation of persons sentenced by court-martial to imprisonment or detention as it applies in relation to a prison: see the Army Act 1955 s 128(2) (amended by the Coroners Act 1988 s 36(1), Sch 3 para 6); the Air Force Act 1955 s 128(2) (amended by the Coroners Act 1988 Sch 3 para 6); and the Naval Detention Quarters Rules 1973, SI 1973/270, r 93. As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to the Secretary of State see para 2 ante.

UPDATE

28 Exemption from jury service

NOTE 6--SI 1984/552 r 51 substituted: SI 2004/921. SI 1973/270 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/29. Voting at elections.

29. Voting at elections.

Each member of the armed forces, whether in the United Kingdom or elsewhere and, if he or she wishes, his or her wife or husband, may make a service declaration for the purpose of voting in parliamentary, European Parliament and local government elections, and is entitled to be registered as an elector¹. Where such a service declaration is in force on the qualifying date², the person concerned must be treated for the purposes of registration as resident on that date at the address specified in the declaration and, until the contrary is proved, as being a holder of British nationality or a citizen of the Republic of Ireland of the age appearing from the declaration and as not suffering from any legal incapacity except as so appearing³. The service declaration continues in force (if not cancelled) for so long as the declarant has a service qualification⁴. A person registered as a service voter may apply to be treated as an absent voter at a parliamentary election and thus be enabled to vote by post⁵. Service voters may also appoint proxies to vote for them⁶.

A member of the reserve forces, not in permanent service, is not liable to any penalty or punishment for absence for voting for a member of Parliament, a member of the Scottish Parliament, a member of the National Assembly for Wales, a member of the Northern Ireland Assembly, a member of the European Parliament, or at a local election or while going to or returning from such voting⁷.

1 See the Representation of the People Act 1983 s 14 (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) para 140 et seq. If the spouse is within the United Kingdom he or she may, alternatively, register as a civilian voter: see the Queen's Regulations for the Army 1975 para J5.587 Annex K(J); the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 28 para J2160. See also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 67. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 As to the qualifying date see ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) para 128.

3 See the Representation of the People Act 1983 s 17 (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) para 145.

4 See ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) para 188. As to the form and effect of a service declaration see further ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) paras 142, 145.

5 See ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) para 378.

6 See ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) para 379 et seq.

7 Reserve Forces Act 1996 s 125 (amended by the Armed Forces Act 2001 s 34, Sch 6 para 13; and by the Scottish Parliament (Elections etc) Order 1999, SI 1999/787, art 97, Sch 8 Pt I para 1).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/30. Repossession of dwelling house let by serviceman.

30. Repossession of dwelling house let by serviceman.

A member of the regular armed forces of the Crown who has let a dwelling house is, in certain circumstances, entitled to a court order for possession of the house even though the tenancy would otherwise be protected by statute¹.

¹ See LANDLORD AND TENANT vol 27(2) (2006 Reissue) paras 962, 971. As to the protection afforded in certain circumstances to tenants see LANDLORD AND TENANT vol 27(2) (2006 Reissue) paras 780 et seq, 1073 et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/31. Hospital detention orders relating to servicemen and others suffering from mental disorder when abroad.

31. Hospital detention orders relating to servicemen and others suffering from mental disorder when abroad.

Where a person who is subject to service law¹ is serving in a country or territory outside the United Kingdom², or is a civilian in a corresponding position³, and it appears to his commanding officer⁴: (1) that he is suffering from mental disorder⁵ of a nature or degree which warrants his detention in a hospital for assessment or treatment for at least a limited period; and (2) that he ought to be so detained⁶, then, if he thinks fit, the commanding officer may order that person to be admitted to and detained in a service hospital⁷ specified in the order⁸. The person in question may then be admitted to and detained in that hospital for assessment or treatment on the authority of that order⁹.

No such order may be made except on the written recommendations of two registered medical practitioners each of whom must include in his recommendation a statement that he is satisfied as to the grounds for the detention¹⁰, and an order then made has effect for 28 days¹¹. In a case of urgent necessity, the commanding officer may make such an order on the written recommendation of one registered medical practitioner if that recommendation includes an additional statement that the person's admission to and detention in a hospital is of urgent necessity and that the obtaining of another recommendation would involve undesirable delay¹², and an order so made has effect for five days¹³. Where an order for a person's admission to and detention in a hospital has been made by virtue of a single recommendation, and during its currency the commanding officer receives a recommendation of another registered medical practitioner made for these purposes, he may make a further order for the person's further detention in a hospital¹⁴.

An order of a person's commanding officer made pursuant to these provisions is sufficient authority, in relation to the person in question, for his being taken and conveyed to the specified hospital, his detention in it and, when arrangements are made for his removal to the United Kingdom for further assessment or treatment, his being taken from the hospital and conveyed to the United Kingdom, and for that purpose his detention in any place or on board any ship or aircraft¹⁵. Where a person is so removed to the United Kingdom on the authority of the order of his commanding officer, he may not, on such authority, be detained in any place in the United Kingdom for longer than 24 hours¹⁶.

1 'Service law' means military law, air force law or the Naval Discipline Act 1957: Armed Forces Act 1981 s 13(9).

2 For these purposes, any reference to the United Kingdom includes a reference to the Channel Islands and the Isle of Man: *ibid* s 13(9). As to the meaning of 'United Kingdom' generally see para 20 note 1 ante.

3 'Civilian in a corresponding position' means a person to whom the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), or the Naval Discipline Act 1957 Pt I (ss 1-143) (as amended), Pt II (ss 45-92) (as amended) (see para 302 et seq post), is or are applied by the Army Act 1955 s 209 (as amended), the Air Force Act 1955 s 209 (as amended), or the Naval Discipline Act 1957 s 118 (as amended), respectively (see para 21 ante): Armed Forces Act 1981 s 13(9). See further para 311 post.

4 'Commanding officer', in relation to a person, means: (1) where that person is subject to military or air force law, the officer in command of the unit or detachment to which that person belongs or is attached; (2) where that person is subject to the Naval Discipline Act 1957, the officer in command of the ship or naval establishment to which that person belongs; and (3) where that person is a civilian in a corresponding position to a person subject to military law, air force law or the Naval Discipline Act 1957, any officer of or above the

rank of lieutenant colonel, wing commander, or commander, respectively: Armed Forces Act 1981 s 13(9). Where a person's commanding officer is absent or otherwise not available, the powers conferred by s 13 (as amended) are exercisable, except where the person is a civilian, in the same circumstances and subject to the same limitations, by any officer under the command of the first-mentioned officer, being an officer of or above the rank of captain, flight-lieutenant or lieutenant according as he serves in the military, air or naval forces of the Crown: s 13(8).

5 'Mental disorder' has the same meaning as it has in the Mental Health Act 1983 (see s 1(2); and MENTAL HEALTH vol 30(2) (Reissue) para 402): Armed Forces Act 1981 s 13(9) (amended by the Mental Health Act 1983 s 148(1), Sch 4 para 59).

6 le in the interest of his own health or safety or with a view to the protection of other persons: Armed Forces Act 1981 s 13(2)(b).

7 'Service hospital' means a military, air force or naval unit or establishment or a ship at or in which medical or surgical treatment is provided for persons subject to service law: *ibid* s 13(9).

8 *Ibid* s 13(1), (2) (s 13(1), (2) amended by the Mental Health (Amendment) Act 1982 s 65(1), Sch 3 Pt I para 62).

9 Armed Forces Act 1981 s 13(1) (as amended: see note 8 *supra*).

10 le as to the matters specified in *ibid* s 13(2) (as amended): see heads (1) and (2) in the text.

11 *Ibid* s 13(3), (6).

12 *Ibid* s 13(4).

13 *Ibid* s 13(6).

14 *Ibid* s 13(5). This further order may be for the person's detention in the hospital specified in the original order or may be for the person's admission to and detention in a hospital specified in the further order: s 13(5).

15 *Ibid* s 13(6)(a)-(c) (s 13(6)(c) amended by the Mental Health (Amendment) Act 1982 Sch 3 Pt I para 62). While being so conveyed or detained, a person in relation to whom such an order is in force is deemed to be in military, air force or naval custody, as the case may be: Armed Forces Act 1981 s 13(6).

16 *Ibid* s 13(7). It would appear that the purpose of this provision is to limit the patient's detention under the order, after he has reached the United Kingdom, to the minimum period necessary to permit an application to the appropriate authorities there for his detention under the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) para 435 et seq).

UPDATE

31 Hospital detention orders relating to servicemen and others suffering from mental disorder when abroad

TEXT AND NOTES--Armed Forces Act 1981 s 13 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/32. Exemption from tolls.

32. Exemption from tolls.

No duty or toll for embarking from or disembarking on any pier, wharf, quay or landing place, or for passing over any road or bridge¹, in the United Kingdom² or any colony³, is payable in respect of members of the regular forces⁴ or the regular air force⁵ on duty, or in respect of vehicles in military or air force service⁶ belonging to the Crown or driven by persons (whether members of Her Majesty's forces or not) in the service of the Crown, or in respect of goods carried in such vehicles, or horses or other animals in military or air force service⁷. For the purpose of this exemption, any member of the reserve land, air or marine force when going to or returning from any place at which he is required to attend, and for non-attendance at which he is liable to be punished, is deemed to be a member of the regular army or regular air force, as the case may be, on duty⁸.

These provisions apply also to visiting forces and to international headquarters⁹.

1 As to what is a bridge in this context see *Ward v Gray* (1865) 6 B & S 345, where a floating bridge, propelled by steam and guided by chains, was held not to be a bridge under similar legislation.

2 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

3 As to the meaning of 'colony' see para 20 note 4 ante.

4 For the meaning of 'regular forces' see para 191 post.

5 For the meaning of 'regular air force' see para 206 post.

6 He employed under proper military or air force authority for the purposes of any body of the regular forces or regular air force or accompanying any body of those forces: Army Act 1955 s 184(2); Air Force Act 1955 s 184(2). See *Craig v Nicholas* [1900] 2 QB 444, DC (exemption was held not to extend to a private car used for an officer's own convenience while on duty); *A-G v Selby Bridge Proprietors* [1921] 3 KB 31, CA (exemption was held to extend to a private car the use of which on duty was authorised). See also *London and South Western Rly Co v Reeves* (1866) LR 1 CP 580 (decided under the Mutiny Act 1703), where a wagon used by a contractor to the forces to convey forage for the use of the forces was held to be exempt from a turnpike toll; *Toomer v Reeves* (1867) LR 3 CP 62 (a similar case). Whether or not a vehicle is on duty is determined by whether or not the driver, not whether or not any passenger, is on duty: see *Nyali Ltd v A-G* [1957] AC 253, [1956] 2 All ER 689, HL.

7 Army Act 1955 s 184(1); Air Force Act 1955 s 184(1). References in these provisions to motor vehicles or to activities or places connected with them include references to hovercraft or activities or places connected with them: Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 6, Sch 3 Pt A. A similar exemption from tolls applies to those levied on ferries acquired by local authorities: see the Ferries (Acquisition by Local Authorities) Act 1919 s 4 (amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 3, Sch 2 para 8; the Theft Act 1968 s 33(3), Sch 3; and the Post Office Act 1969 s 141, Sch 11 Pt II). As to the exemption of the Crown and its servants from tolls see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 843; HIGHWAYS, STREETS AND BRIDGES. Members of the regular forces or regular air force on duty may use ferries in Scotland on payment of half rate: Army Act 1955 s 184(3); Air Force Act 1955 s 184(3).

8 Reserve Forces Act 1996 s 124. See *Tunstall v Lloyd, Stephenson v Taylor* (1861) 1 B & S 95 (carriage conveying volunteers in uniform to their homes after drill was held to be exempt); *Teather v Turner* (1863) 7 LT 785 (volunteer in uniform going to a shooting match open to all comers was held not to be exempt).

9 In the Army Act 1955 s 184 any reference to members of the regular forces includes a reference to members of a visiting force or military members of a headquarters; and any reference to vehicles in military service, or horses or other animals in military service, includes a reference to vehicles, or (as the case may be) horses or other animals, used for the purposes of a visiting force or headquarters: Visiting Forces and

International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(2), Sch 6. As to visiting forces and headquarters see para 135 et seq post.

UPDATE

32 Exemption from tolls

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. See now the Armed Forces Act 2006 s 349.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 8--Reserve Forces Act 1996 s 124 repealed: Armed Forces Act 2006 Sch 14 para 51, Sch 17.

NOTE 9--SI 1999/1736 Sch 6 amended: SI 2009/2054.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/33. Exemption from licensing requirements.

33. Exemption from licensing requirements.

Nothing in the Licensing Act 1964 applies to the sale or consumption of intoxicating liquor¹ in canteens in which the sale or supply of intoxicating liquor is carried on under the authority of the Secretary of State² or the service authorities of any visiting force or international headquarters³. The sale or supply of intoxicating liquor to such a canteen, or to an authorised mess of members of Her Majesty's naval, military or air forces, or of any visiting force or international headquarters, is not confined to permitted hours⁴, and nor do the restrictions upon credit sales in licensed premises apply to prohibit or restrict the sale or supply of intoxicating liquor in any such canteen or mess⁵.

Statutory provisions prohibiting, restricting or regulating the use of premises for public entertainment or amusement do not apply to the use for such purposes, under the authority of a Secretary of State, of any building at a camp, station or naval establishment, or of any ship, under official direction and control⁶.

1 For the meaning of 'intoxicating liquor' see LICENSING AND GAMBLING vol 67 (2008) PARAS 30, 215.

2 As to the Secretary of State see para 2 ante.

3 See the Licensing Act 1964 ss 199(i), 201(1).

4 See *ibid* s 63(2).

5 See *ibid* s 166(3). As to the application of these provisions to visiting forces and headquarters see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(2), Sch 6. See further paras 142, 150 post.

6 See the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 4, Sch 3 para 1 (as amended); and LICENSING AND GAMBLING vol 67 (2008) PARA 223.

UPDATE

33 Exemption from licensing requirements

NOTE 5--SI 1999/1736 Sch 6 amended: see PARA 32.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/34. Exemption from taxation and rating.

34. Exemption from taxation and rating.

Property in the occupation of the Crown used exclusively or substantially¹ for naval, military or air force purposes is exempt from taxation and rating². Gifts made for the purpose of increasing the efficiency of the armed forces do not attract taxation³. The value of travel facilities provided for members of the naval, military and air forces of the Crown while going on or returning from leave is not chargeable to Schedule E income tax⁴, and certain other allowances, bounties and gratuities are also not regarded as income for any income tax purposes⁵.

The estate of a member of the armed forces of the Crown is exempt from inheritance tax in certain circumstances⁶.

The emoluments paid to a member of a visiting force or to a member of its forces attached to a headquarters are exempt from income tax⁷.

Treasury regulations may provide that specified goods for Her Majesty's ships are to be treated as exported for the purposes of excise duty⁸.

1 In order that the exemption may be enjoyed, the use of the property need not be exclusively for public purposes, but regard must be had to the essential use: *Derby (Territorial Army Association) v Derby (South Eastern Area) Assessment Committee* [1935] 2 KB 373, DC (a drill hall was held to be wholly exempt from rating, although used once a week in winter for dances, open to the public on payment, in order to keep the members together during that season and to raise money for Territorial Army charitable purposes). See also RATING AND COUNCIL TAX vol 39(1B) (Reissue) paras 38, 242.

2 See CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 80 et seq; INCOME TAXATION vol 23(2) (Reissue) para 1165; RATING AND COUNCIL TAX vol 39(1B) (Reissue) paras 38, 242.

3 Such gifts have been held to contain a sufficient element of public benefit to be gifts for purposes which are in law charitable: see CHARITIES vol 8 (2010) PARA 45.

4 See INCOME TAXATION vol 23(1) (Reissue) para 629.

5 See INCOME TAXATION vol 23(2) (Reissue) para 1227.

6 See INHERITANCE TAXATION vol 24 (Reissue) para 455.

7 See INCOME TAXATION vol 23(2) (Reissue) para 1171.

8 See CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 874.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/35. Social security and armed forces.

35. Social security and armed forces.

Members of Her Majesty's forces, while serving as such, are treated for the purposes of the Social Security Contributions and Benefits Act 1992 as employed earners¹, and regulations have been made modifying the statutory provisions in their application to such persons². They are not, however, entitled to industrial injuries benefit³. Regulations may modify any provision of the Jobseekers Act 1995 in its application to persons who are or have been members of Her Majesty's forces⁴.

1 See SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 31 et seq. For the meaning of 'employed earner' see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 32.

2 As to such regulations see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 22.

3 See SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 22. It seems that the exclusion extends to members of the Territorial Army employed and paid as such: *Re Cousens* [1938] 1 KB 499, [1938] 1 All ER 17.

4 See the Jobseekers Act 1995 s 22; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 22. At the date at which this volume states the law, no regulations had been made.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/36. Housing.

36. Housing.

The cost of approved housing accommodation during the period 1950-68 in Great Britain for married persons serving in or employed in connection with the armed forces of the Crown, so long as certain conditions were met, was permitted to be borne (up to a specified amount) out of the Consolidated Fund, and therefore not out of money provided by Parliament for the requirements of the Minister of Public Building and Works¹. Provision has been made for the repayment, out of the money provided by Parliament for the service of the Ministry of Defence, of sums so issued out of the Consolidated Fund in any financial year by annual instalments of principal and interest combined over a period of 60 years², with further provisions permitting the repayment in any financial year of additional money, so as to reduce the number or the amount of all or any of the annual instalments ultimately payable³.

1 See the Armed Forces (Housing Loans) Act 1949 s 1(1) (repealed by the Statute Law (Repeals) Act 1993). The amount so issued out of the Consolidated Fund in any one year was not to exceed the amount proposed to be issued to defray that expenditure for that year by the estimates already approved by the House of Commons: Armed Forces (Housing Loans) Act 1949 s 1(1) proviso (repealed by the Statute Law (Repeals) Act 1993). The Ministry of Public Building and Works was dissolved and replaced by the Department of the Environment (now the Department for Environment, Food and Rural Affairs), but as this change occurred only after all the payments calculated by reference to the former ministry's estimates had already been made, it seems that the statutory provisions here described are not affected. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031. For the meaning of 'Great Britain' see para 20 note 1 ante.

2 Armed Forces (Housing Loans) Act 1949 s 1(3) (amended by the Armed Forces (Housing Loans) Act 1965 s 1(5), Schedule Pt I; and the National Loans Act 1968 s 2, Sch 1). The purpose of these arrangements was to spread the cost of capital expenditure on housing requirements over a long period by borrowing from the Consolidated Fund instead of its falling upon the funds of the Ministry of Defence in the year in which any such capital expenditure was incurred. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

3 See the Armed Forces (Housing Loans) Act 1958 s 2 (amended by the Armed Forces (Housing Loans) Act 1965 s 1(5); the National Loans Act 1968 s 2, Sch 1; and the Statute Law (Repeals) Act 1993).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/37. Exemption from statutory requirements concerning firearms and explosives.

37. Exemption from statutory requirements concerning firearms and explosives.

Members of the armed forces in their capacity as such are exempted from requiring a certificate¹ for the possession of firearms², and may purchase or acquire firearms and ammunition for the public service without holding a certificate, provided they have written authorisation³. These exemptions and privileges apply also to members of visiting forces or international headquarters⁴. Members of any foreign force⁵ when they are serving with any of the naval, military or air forces of Her Majesty and members of any cadet corps approved by the Secretary of State⁶ may also possess prohibited weapons or prohibited ammunition⁷. Any person who is supervised by a member of the armed forces may have in his possession, without a licence, a firearm and ammunition providing he is on service premises⁸.

Explosives manufactured or held for the service of the Crown or a visiting force, or conveyed on ships and aircraft of Her Majesty or a visiting force, are exempt from the statutory control⁹.

1 See a certificate granted under the Firearms Act 1968: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 634.

2 See *ibid* s 54(1) (amended by the Firearms (Amendment) Act 1997 s 52, Sch 2 paras 10, 11); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 634. As to the restrictions applicable to the purchase, acquisition, possession and use of firearms and ammunition see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 630 et seq.

3 See *ibid* s 54(2)(a); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 634. As to the grant of a firearm certificate without payment of a fee to a person in the naval, military or air service of Her Majesty for his own use in such capacity see s 54(2)(b) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 634.

4 See the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12, Sch 6. As to visiting forces and international headquarters see para 135 et seq post.

5 'Foreign force' means any of the naval, military or air forces of a country other than the United Kingdom: Firearms Act 1968 s 54(6) (added by the Armed Forces Act 1996 s 28). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

6 As to the Secretary of State see para 2 ante.

7 See the Firearms Act 1968 s 54(4), (5) (added by the Armed Forces Act 1996 s 28; and the Firearms Act 1968 s 54(5) (as added) amended by the Firearms (Amendment) Act 1997 s 52, Sch 2 para 3, Sch 3). In the case of cadet corps this exemption applies when they are engaged as members of the corps in, or in connection with, drill or target practice on service premises: Firearms Act 1968 s 54(5)(b) (as so added and amended). For these purposes, 'service premises' means premises, including any ship or aircraft, used for any purpose of any of the naval, military or air forces of Her Majesty: s 54(6) (as added: see note 5 supra).

8 Firearms (Amendment) Act 1988 s 16A(1) (s 16A added by the Armed Forces Act 1996 s 28(2)). For these purposes, 'armed forces' means any of the naval, military or air forces of Her Majesty; and 'service premises' means premises, including any ship or aircraft, used for any purpose of the armed forces: Firearms (Amendment) Act 1988 s 16A(3) (as so added). The provisions of s 16A (as added) do not apply to a person while engaged in providing security protection on service premises: s 16A(2) (as so added).

9 See the Explosives Act 1875 s 97 (as amended); and EXPLOSIVES vol 17(2) (Reissue) para 909.

UPDATE

37 Exemption from statutory requirements concerning firearms and explosives

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 4--SI 1999/1736 Sch 6 amended: see PARA 32.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/38. Powers of certain officers to take affidavits.

38. Powers of certain officers to take affidavits.

An officer of the regular forces¹ who is of or above the rank of major or is of the rank of captain and is a member of the legal services branch of any corps of those forces, or an officer of the regular air force² who is of or above the rank of squadron leader or is of the rank of flight lieutenant and is a member of the legal branch of that force, may, at a place outside the United Kingdom³, take affidavits and declarations from any person subject to his own service law or from certain civilians⁴ not so subject⁵. An officer subject to the Naval Discipline Act 1957 who is of or above the rank of lieutenant commander or equivalent or relative rank, or is of the rank of lieutenant and is specially appointed for this purpose⁶, has similar powers in relation to persons subject to that Act, and any person not so subject who is employed by, or in the service of, the Secretary of State for Defence⁷ for the naval purposes of his department, or is employed by or in the service of any of Her Majesty's naval forces, or who accompanies any of those forces⁸.

Officers of one service who are thus empowered to take affidavits and declarations within their own service may also take them from persons belonging to or similarly connected with either of the other two services⁹.

Provision is made for the proof of affidavits and declarations purporting to have been taken in pursuance of the provisions described above¹⁰.

1 For the meaning of 'regular forces' see para 191 post.

2 For the meaning of 'regular air force' see para 206 post.

3 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

4 I.e. those specified in the Army Act 1955 s 204(1), Sch 5 (as amended) or the Air Force Act 1955 s 204(1), Sch 5 (as amended): see note 5 infra; and para 311 post.

5 Army Act 1955 s 204(1), Sch 5; Air Force Act 1955 s 204(1), Sch 5 (the Army Act 1955 s 204(1) and the Air Force Act 1955 s 204(1) amended by the Armed Forces Act 1981 s 19(1), (3), (4); and by the Armed Forces Act 1996 s 35(1), Sch 6 para 2; the Army Act 1955 Sch 5 and the Air Force Act 1955 Sch 5 amended by the Armed Forces Act 2001 s 34, Sch 6 para 44; and by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). In broad terms, the person covered by the Army Act 1955 Sch 5 (as amended) and the Air Force Act 1955 Sch 5 (as amended) are: (1) civilians who, outside the United Kingdom, are working for or in association with the armed forces, eg civil servants, teachers, journalists, welfare workers, and the Navy, Army and Air Force Institutes (NAAFI) personnel; (2) persons forming part of the families of members of the armed forces or of persons under head (1) supra; and (3) employees of members of the armed forces or of persons under head (1) or head (2) supra.

6 An officer of the rank of lieutenant may not be appointed to take affidavits and declarations unless he is a barrister, solicitor or advocate: Emergency Laws (Miscellaneous Provisions) Act 1953 s 10(1A) (added by the Armed Forces Act 1981 s 19(2)(b)).

7 As to the Secretary of State for Defence see para 2 ante.

8 Emergency Laws (Miscellaneous Provisions) Act 1953 s 10(1), (3) (amended by the Armed Forces Act 1981 s 19(1), (2); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Naval Discipline Act 1957 s 137(2).

9 Emergency Laws (Miscellaneous Provisions) Act 1953 s 10(4); Army Act 1955 s 204(3); Air Force Act 1955 s 204(3) (all added by the Armed Forces Act 1971 s 70).

10 See the Emergency Laws (Miscellaneous Provisions) Act 1953 s 10(2); the Army Act 1955 s 204(2); the Air Force Act 1955 s 204(2); and CIVIL PROCEDURE vol 11 (2009) PARA 892.

UPDATE

38 Powers of certain officers to take affidavits

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Emergency Laws (Miscellaneous Provisions) Act 1953 s 10 repealed: Armed Forces Act 2006 Sch 17. See now the Armed Forces Act 2006 s 352.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(2) DISQUALIFICATIONS, EXEMPTIONS AND PRIVILEGES/39. Miscellaneous exemptions and privileges.

39. Miscellaneous exemptions and privileges.

Certain property of members of the armed forces used by them for service purposes is exempt from being taken in execution to enforce a judgment or order of any court¹.

Ships and aircraft forming part of the armed forces of the Crown, or of the armed forces of any country within the Commonwealth or of any other designated country, are exempt from the provisions of the regulations for the prevention of danger to health or the spread of infection².

The Civil Aviation Act 1982 does not apply to aircraft belonging to, or exclusively employed in the service of, the Crown, unless specifically so applied³.

Generally, the provisions of the Merchant Shipping Act 1995 do not apply to ships belonging to the Crown⁴, and such ships are also exempted from the obligations of compulsory pilotage and from payment of statutory pilotage dues⁵.

While military vehicles are in use in connection with training, or are on manoeuvres⁶ or proceeding in convoy on tactical or driving exercises, they are exempt from the statutory requirements as to the lighting of vehicles⁷.

1 See CIVIL PROCEDURE vol 12 (2009) PARA 1324. As to the enforcement of maintenance orders against members of the armed forces see para 74 post.

2 See ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 933.

3 See AIR LAW vol 2 (2008) PARA 31. However, Her Majesty may, by Order in Council, apply certain provisions of the Civil Aviation Act 1982 to aircraft employed in her service: see s 101(1), (2) (as amended); and AIR LAW vol 2 (2008) PARA 31. The Carriage by Air Act 1961, which gives effect to the Warsaw Convention concerning international carriage by air (see CARRIAGE AND CARRIERS vol 7 (2008) PARA 121 et seq), enables Her Majesty by Order in Council to exclude from the provisions of the Convention the carriage of persons, cargo and baggage for military authorities of the United Kingdom or any other specified state in aircraft wholly reserved by or on behalf of those authorities: see the Carriage by Air Act 1961 s 7 (as amended); and CARRIAGE AND CARRIERS vol 7 (2008) PARA 128. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

4 See the Merchant Shipping Act 1995 s 308(1); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 20. As to the protection of the interests of the Crown in wrecks see CROWN PROPERTY vol 12(1) (Reissue) para 270 et seq.

5 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 562 et seq.

6 As to manoeuvres see para 95 et seq post.

7 See ROAD TRAFFIC vol 40(1) (2007 Reissue) para 401.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/40. Enlistment offences.

(3) CIVILIANS' OFFENCES

(i) Offences in relation to the Armed Forces

40. Enlistment offences.

Any man¹ who, when entering, enlisting or offering himself for entry or enlistment into the armed forces of the Crown, makes use of any statement as to his character or previous employment which to his knowledge² is false in any material particular³, is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁴; and any person making a written statement relating to the character or previous employment of any man which the person making it knows to be false in any material particular, and which he allows or intends to be used for the purpose of entry or enlistment of that man into the armed forces, is similarly liable⁵.

A person appearing before a recruiting officer for the purpose of being attested and who knowingly⁶ makes a false answer to any question contained in the attestation paper put to him by, or by the direction of, the recruiting officer, is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 1 on the standard scale⁷. A person offering himself to be entered for service in the Royal Navy, who knowingly makes a false answer to any question put to him in connection with such entry, by or on the direction of, an officer or other person authorised to enter persons for such service, is similarly liable⁸. Any person appearing before an enlisting officer for the purpose of being attested for entry into any of the reserve forces who knowingly or recklessly makes a false answer to any question contained in the attestation paper and put to him by, or by the direction of, the enlisting officer is guilty of an offence⁹.

1 Except in its application to the armed forces of the Crown raised outside the United Kingdom, 'man' now has effect as a reference to a person of either sex: see the Armed Forces Act 1981 s 20(1), Sch 3 para 1(1), (4); and the Reserve Forces Act 1996 s 2(4). See also para 18 ante.

2 Deliberately refraining from making inquiries the results of which a person might not care to receive may amount to constructive knowledge (see *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449-450; *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847), but mere neglect to find out what would have been found out by reasonable inquiries is not tantamount to knowledge (see *Taylor's Central Garages (Exeter) Ltd v Roper* supra at 450).

3 A statement may be false on account of what it omits, whereby it is rendered misleading even though what it does state is literally true: *R v Lord Kylsant* [1932] 1 KB 442, CCA; *R v Bishirgian* [1936] 1 All ER 586, CCA; and cf *Curtis v Chemical Cleaning and Dyeing Co* [1951] 1 KB 805 at 808-809, [1951] 1 All ER 631 at 634, CA, per Denning LJ. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 716 et seq.

4 Seamen's and Soldiers' False Characters Act 1906 s 2 (amended by the Criminal Law Act 1977 s 31(5), (6); the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I; and the Criminal Justice Act 1982 s 46(1), (4)); Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548, art 1, Schedule.

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from

the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

5 See note 4 supra.

6 See note 2 supra.

7 Army Act 1955 s 19(1); Air Force Act 1955 s 19(1) (both amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the place of trial of offences see para 60 post. A person may be proceeded against under the Army Act 1955 s 19 (as amended), or the Air Force Act 1955 s 19 (as amended), notwithstanding that he has since become subject to military or air force law: Army Act 1955 s 19(2); Air Force Act 1955 s 19(2). Cf the corresponding offence under the Army Act 1955 s 61 and the Air Force Act 1955 s 61 (see para 413 post).

In the application of the Army Act 1955 or the Air Force Act 1955 to any colony, there is to be substituted for the amount of any fine specified in those Acts, being a fine which may be imposed on summary conviction, such amount as may be provided by the law of that colony: see the Army Act 1955 s 222; and the Air Force Act 1955 s 220. Similar provision is made in respect of fines imposed under the Naval Discipline Act 1957, but not limited to fines on summary conviction: see s 126(5). As to the meaning of 'colony' see para 20 note 4 ante.

8 Armed Forces Act 1966 s 8(1) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). Cf the corresponding offence under the Naval Discipline Act 1957 s 34A (as added): see para 413 post.

9 See the Reserve Forces Act 1996 s 9 (as amended), Sch 1 para 5; and para 178 post. As to the reserve forces see paras 173 et seq, 223 et seq post.

UPDATE

40 Enlistment offences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-5--1906 Act repealed: Statute Law (Repeals) Act 2008.

TEXT AND NOTE 7--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

TEXT AND NOTE 8--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/41. Personation of the holder of a certificate of service or discharge.

41. Personation of the holder of a certificate of service or discharge.

If any person personates the holder of a certificate of service or discharge¹ he is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale².

¹ To use a certificate of service or discharge of any seaman, soldier or airman: see the Seamen's and Soldiers' False Characters Act 1906 s 1(1) (as originally enacted); and the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548, art 1, Schedule.

² Seamen's and Soldiers' False Characters Act 1906 s 1(1) (amended by the Criminal Law Act 1977 s 31(5), (6); the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I; and the Criminal Justice Act 1982 ss 35, 46). As to the standard scale see para 40 note 4 ante. The references to forgery of a certificate of service or discharge formerly contained in the Seamen's and Soldiers' False Characters Act 1906 s 1(1) (as originally enacted), have been repealed: see the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I. As to the offence of forgery see now Pt I (ss 1-13) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 346 et seq. As to the offence of unauthorised wearing of uniforms see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 378; and as to the offence of wearing naval, military or air force uniform, without lawful authority, to gain admission to certain defence establishments see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 491.

UPDATE

41 Personation of the holder of a certificate of service or discharge

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/42. Falsely representing oneself to be a deserter or illegally absent.

42. Falsely representing oneself to be a deserter or illegally absent.

Any person who in the United Kingdom¹ or any colony² falsely represents himself to any service or civil authority to be a deserter³ from the regular forces⁴ or the regular air force⁵ commits an offence⁶. Every person who, within or outside the United Kingdom and colonies, falsely represents himself to any service or civil authority to be a person illegally absent⁷ from any of Her Majesty's naval forces⁸ is similarly liable⁹. Any person who falsely represents himself to be a deserter or an absentee without leave¹⁰ from any reserve force is also guilty of an offence¹¹.

1 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 As to the meaning of 'colony' see para 20 note 4 ante. As to the application of these provisions to certain other overseas territories see para 20 ante.

3 As to desertion from the army or air force see para 404 post.

4 For the meaning of 'regular forces' see para 191 post.

5 For the meaning of 'regular air force' see para 206 post.

6 Army Act 1955 s 191; Air Force Act 1955 s 191. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale, or to both: Army Act 1955 s 191; Air Force Act 1955 s 191 (both amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 40 note 4 ante. As to the jurisdiction of civil courts in relation to offences see para 60 post.

7 As to absence without leave from the naval forces see para 404 post.

8 For the meaning of 'Her Majesty's naval forces' see para 7 ante.

9 See the Naval Discipline Act 1957 s 96 (amended by the Armed Forces Act 1976 s 15(2); and by virtue of the Criminal Justice Act 1982 ss 38, 46).

10 As to desertion and absence without leave from the reserve forces see para 248 post.

11 Reserve Forces Act 1996 s 99. A person guilty of such an offence is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale, or both: s 99. As to the reserve forces see paras 173 et seq, 223 et seq post.

UPDATE

42 Falsely representing oneself to be a deserter or illegally absent

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/43. Procuring desertion or illegal absence.

43. Procuring desertion or illegal absence.

It is an offence for any person, within or outside the United Kingdom¹: (1) to procure or persuade² any person subject to the Naval Discipline Act 1957³ to commit an offence of desertion, of absenting himself without leave⁴, or of improperly leaving his ship⁵; (2) knowing that any such person is about to commit such an offence, to assist him in so doing⁶; or (3) knowing any such person to have committed such an offence, to procure or persuade or assist him to remain a deserter, absentee without leave or improperly absent from his ship, or to assist in his rescue from custody⁷. Similarly, it is an offence for any person, within or outside Her Majesty's dominions⁸, to act in respect of any member of the regular forces⁹ or of the regular air force¹⁰ in any such manner as is described above¹¹. It is also an offence for any person, in the United Kingdom or elsewhere, to act in respect of any member of a reserve force¹² or a person liable to recall¹³ in any such manner as is described above¹⁴.

1 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 An attempt so to procure or persuade is also an offence: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 79. As to determining whether an attempt is a civil offence see the Naval Discipline Act 1957 s 42 (as amended); and para 422 post.

3 As to the persons subject to the Naval Discipline Act 1957 see paras 13 ante, 306, 309 et seq post.

4 As to the offences of desertion and absence without leave from the navy see para 404 post.

5 Naval Discipline Act 1957 s 97(1)(a) (amended by the Armed Forces Act 1971 ss 77(1), 78(4)(a), Sch 4 Pt I; and by the Armed Forces Act 1976 s 15(2)). See note 7 infra.

6 Naval Discipline Act 1957 s 97(1)(b). See note 7 infra.

7 Ibid s 97(1)(c) (substituted by the Armed Forces Act 1966 s 18(2); and amended by the Armed Forces Act 1971 Sch 4 Pt I). A person guilty of an offence against the Naval Discipline Act 1957 s 97 (as amended) is liable on summary conviction to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both: s 97(2) (amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)).

The 'prescribed sum' means £5,000 or such sum as is for the time being substituted by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

As to the jurisdiction of civil courts in relation to offences under the Naval Discipline Act 1957 s 97 (as amended) see para 60 post. As to the fines which may be imposed by colonial courts see para 40 note 7 ante.

A person who is himself subject to the Naval Discipline Act 1957 who commits any of these offences may be charged and dealt with under s 41 (as substituted): see para 421 post. A person so subject who commits a corresponding offence in relation to a member of the regular forces or the regular air force may be charged and dealt with under s 42 (as amended) for committing a civil offence, ie an offence against the Army Act 1955 s 192(1) (as amended) or the Air Force Act 1955 s 192(1) (as amended), as the case may be.

8 As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707.

9 Ie any officer, warrant officer, non-commissioned officer or soldier of the regular forces: see the Army Act 1955 s 192(1). For the meaning of 'regular forces' see para 191 post.

10 Ie any officer, warrant officer, non-commissioned officer or airman of the regular air force: see the Air Force Act 1955 s 192(1). For the meaning of 'regular air force' see para 206 post.

11 Army Act 1955 s 192(1); Air Force Act 1955 s 192(1) (both amended by the Armed Forces Act 1966 s 18(1)). As to the offences of desertion and absence without leave from the army or air force see para 404 post. Any reference in the Army Act 1955 s 192 (as amended) to a member of the regular forces has effect as if it included a member of a visiting force or international headquarters: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 18. A person guilty of an offence under the Army Act 1955 s 192 (as amended) or the Air Force Act 1955 s 192 (as amended) is liable on summary conviction to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to an unlimited fine or to imprisonment for a term not exceeding two years, or to both: Army Act 1955 s 192(2); Air Force Act 1955 s 192(2) (both amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the jurisdiction of civil courts in relation to offences under the Army Act 1955 s 192 (as amended) or the Air Force Act 1955 s 192 (as amended) see para 60 post. A person who is himself subject to military law or air force law, and who commits an offence under the Army Act 1955 s 192 (as amended) or the Air Force Act 1955 s 192 (as amended), may be charged and dealt with under the Army Act 1955 s 68A (as added) or the Air Force Act 1955 s 68A (as added), as appropriate: see para 421 post. A person so subject who commits a corresponding offence in respect of another person subject to the service law of one of the regular armed forces other than that to which he himself belongs can be charged and dealt with under the Army Act 1955 s 70 (as amended) or the Air Force Act 1955 s 70 (as amended), as appropriate, for committing a civil offence, ie an offence against the Naval Discipline Act 1957 s 97(1) (as amended), the Army Act 1955 s 192(1) (as amended), or the Air Force Act 1955 s 192(1) (as amended), as the case may be: see further para 422 post.

12 As to the reserve forces see paras 173 et seq, 223 et seq post.

13 As to the recall of officers and former servicemen see the Reserve Forces Act 1996 Pt VII (ss 65-77); and para 232 et seq post.

14 Ibid s 101(1), (2). A person guilty of such an offence is liable on summary conviction: (1) in the case of an offence involving desertion or a deserter, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both; and (2) in the case of an offence of absence without leave or an absentee without leave, to a fine not exceeding level 5 on the standard scale: s 101(3). As to the standard scale see para 40 note 4 ante. As to the offence of desertion or absence without leave from the reserve forces see paras 248, 310 post.

UPDATE

43 Procuring desertion or illegal absence

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the offence of aiding or abetting desertion without leave, see now the Armed Forces Act 2006 ss 344, 347, 348.

NOTE 11--SI 1999/1736 art 18 substituted: SI 2009/2054.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/44. Wilful obstruction of a member of the armed forces.

44. Wilful obstruction of a member of the armed forces.

Any person who, in the United Kingdom¹ or any colony², wilfully obstructs³ or otherwise interferes with any member of the regular forces⁴ or the regular air force⁵ acting in the execution of his duty is guilty of an offence⁶.

1 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 As to the meaning of 'colony' see para 20 note 4 ante.

3 As to the meaning of 'wilful obstruction' see the cases in relation to the wilful obstruction of police constables cited in CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 735. See also the cases in relation to the wilful obstruction of officers acting in execution of the Food Safety Act 1990 cited in FOOD vol 18(2) (Reissue) para 271.

4 Ie any officer, warrant officer, non-commissioned officer or soldier of the regular forces: see the Army Act 1955 s 193. For the meaning of 'regular forces' see para 191 post.

5 Ie any officer, warrant officer, non-commissioned officer or airman of the regular air force: see the Air Force Act 1955 s 193. For the meaning of 'regular air force' see para 206 post.

6 Army Act 1955 s 193; Air Force Act 1955 s 193. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months, or to both: Army Act 1955 s 193; Air Force Act 1955 s 193 (both amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 40 note 4 ante. As to the place or trial of such offences see para 60 post. As to the fines which may be imposed by colonial courts see para 40 note 7 ante. Cf the corresponding offences created by the Army Act 1955 s 35 (as amended) and the Air Force Act 1955 s 35 (as amended) (obstruction of provost officers): see para 403 post.

UPDATE

44 Wilful obstruction of a member of the armed forces

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to wilful obstruction, see now the Armed Forces Act 2006 ss 346-348.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/45. Encouraging or producing sickness or disability.

45. Encouraging or producing sickness or disability.

It is an offence for any person, whether within or outside Her Majesty's dominions¹, to produce in a member of the regular forces² or regular air force³ any sickness or disability, or to supply to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service, with a view to enabling him to avoid military or air force service permanently or temporarily⁴.

1 As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707.

2 I.e. an officer, warrant officer, non-commissioned officer or soldier of the regular forces: see the Army Act 1955 s 194. For the meaning of 'regular forces' see para 191 post.

3 I.e. an officer, warrant officer, non-commissioned officer or airman of the regular air force: see the Air Force Act 1955 s 194. For the meaning of 'regular air force' see para 206 post.

4 Army Act 1955 s 194; Air Force Act 1955 s 194. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both: Army Act 1955 s 194; Air Force Act 1955 s 194 (both amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 43 note 7 ante. As to the place of trial of such offences see para 60 post. As to the fines which may be imposed by colonial courts of summary jurisdiction see para 40 note 7 ante. Cf the corresponding offences created by the Army Act 1955 s 42(1)(c) (as amended) and the Air Force Act 1955 s 42(1)(c) (as amended) in relation to a person subject to service law: see para 405 post. A person who is himself subject to service law, and who commits an offence under the Army Act 1955 s 194 (as amended) or the Air Force Act 1955 s 194 (as amended) in respect of another person subject to the service law of one of the regular armed forces other than that to which he himself belongs may be charged and dealt with under the Army Act 1955 s 70 (as amended) or the Air Force Act 1955 s 70 (as amended) for committing a civil offence: see further para 422 post.

UPDATE

45 Encouraging or producing sickness or disability

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to aiding or abetting malingering, see now the Armed Forces Act 2006 ss 345, 347, 348.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/46. Illegal possession of official documents.

46. Illegal possession of official documents.

It is an offence for any person to receive, detain or have in his possession¹ any official document (issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's naval, military or air force service) either as a pledge or a security for a debt, or with a view to obtaining payment from the person entitled to the document of a debt due to himself or to any other person². It is also an offence for any person to have in his possession, without lawful authority or excuse³, any such document as aforesaid, or any official document issued in connection with the mobilisation or demobilisation of any of Her Majesty's naval⁴, military or air forces or any member of them⁵.

1 A document is deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another: Army Act 1955 s 196(4); Air Force Act 1955 s 196(4); Naval Discipline Act 1957 s 99(4).

2 Army Act 1955 s 196(1); Air Force Act 1955 s 196(1); Naval Discipline Act 1957 s 99(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months, or to both: Army Act 1955 s 196(3); Air Force Act 1955 s 196(3); Naval Discipline Act 1957 s 99(3) (all amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 40 note 4 ante. As to the fines which may be imposed by colonial courts see para 40 note 7 ante.

The Army Act 1955 s 196 (as amended) and the Air Force Act 1955 s 196 (as amended) have effect in the United Kingdom and in any colony: Army Act 1955 s 196(5); Air Force Act 1955 s 196(5). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante; and as to the meaning of 'colony' see para 20 note 4 ante.

3 The onus of proof of such lawful authority or excuse rests on the person in possession of the document: Army Act 1955 s 196(2); Air Force Act 1955 s 196(2); Naval Discipline Act 1957 s 99(2). As to the standard of proof where a statute places the burden of proof on the defendant see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1370-1371.

4 References in *ibid* s 99, to Her Majesty's naval forces include references to the naval forces of any Commonwealth country or those raised under the law of any colony: s 99(5). For the meaning of 'Her Majesty's naval forces' see para 7 ante. As to the meaning of 'Commonwealth country' see para 20 note 6 ante.

5 Army Act 1955 s 196(2); Air Force Act 1955 s 196(2); Naval Discipline Act 1957 s 99(2). As to the penalty on conviction of such an offence see note 2 supra. As to the place of trial of offences see para 60 post.

UPDATE

46-48 Illegal possession of official documents ... Illegal acquisition and disposal of service property

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/47. Illegal use of or dealing with decorations.

47. Illegal use of or dealing with decorations.

Any person who, in the United Kingdom¹ or in any colony², without authority uses or wears any military or air force decoration³, or any badge⁴, wound stripe or emblem supplied or authorised by the Defence Council⁵, or any decoration or emblem so nearly resembling any military or air force decoration or authorised emblem as to be calculated to deceive, or who falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem, is guilty of an offence⁶. It is also an offence for any person to purchase or take in pawn any naval, military or air force decoration awarded to any member of Her Majesty's military or air forces or to solicit or procure any person to sell or pledge any such decoration, or to act for any person in the sale or pledge of it, unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces⁷.

1 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 As to the meaning of 'colony' see para 20 note 4 ante.

3 'Decoration' includes medal, ribbon, clasp and good conduct badge: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1).

4 'Badge' is not defined in the Army Act 1955 or the Air Force Act 1955, but in this context it is thought to include badges of rank.

5 As to the Defence Council see para 2 ante.

6 Army Act 1955 s 197(1); Air Force Act 1955 s 197(1) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). However, the use or wearing of ordinary regimental badges, or of brooches or ornaments representing them, is not prohibited: Army Act 1955 s 197(1) proviso; Air Force Act 1955 s 197(1) proviso. There are no corresponding provisions in the Naval Discipline Act 1957. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months, or to both: Army Act 1955 s 197(3); Air Force Act 1955 s 197(3) (both amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 40 note 4 ante. As to the place of trial see para 60 post. As to the fines imposed by colonial courts see para 40 note 7 ante.

A person who is subject to the Army Act 1955 or the Air Force Act 1955 and who without authority uses or wears any decoration or badge of his own service may be dealt with under the Army Act 1955 s 69 (as amended) or the Air Force Act 1955 s 69 (as amended) (conduct prejudicial to military or air force discipline), as appropriate: see para 419 post. A person subject to the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 who without authority uses or wears a decoration or badge of a service other than his own may be dealt with on a charge laid under the Army Act 1955 s 70 (as amended), the Air Force Act 1955 s 70 (as amended), or the Naval Discipline Act 1957 s 42 (as amended), of committing a civil offence: see para 422 post.

7 Army Act 1955 s 197(2); Air Force Act 1955 s 197(2). As to the penalty for such an offence see note 6 supra. It is to be noted that the accused is required to prove not merely that he believed the person to whom the decoration was awarded to be dead or no longer a member of the forces, but that the person was in fact dead or no longer such a member when the alleged offence was committed. As to the standard of proof required see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1368 et seq. As to the offence of selling or pawning a service decoration granted to the offender himself see para 407 post.

UPDATE

46-48 Illegal possession of official documents ... Illegal acquisition and disposal of service property

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/48. Illegal acquisition and disposal of service property.

48. Illegal acquisition and disposal of service property.

Any person, who, whether within or outside Her Majesty's dominions¹, acquires² any military or air force stores or naval property³, or solicits or procures any person to dispose⁴ of any such stores or property, or acts for any person in disposing of them, commits an offence⁵, unless he proves either:

- 1 (1) that he did not know, and could not reasonably be expected to know, that the chattels in question were such stores or property; or
- 2 (2) that they had been disposed of⁶ by order or with the consent of the Defence Council⁷, or of some person or authority having, or whom he had reasonable cause to believe to have, power to give the order or consent; or
- 3 (3) that the chattels had become the property of an officer who had retired or ceased to be an officer, or of a warrant officer, non-commissioned officer, soldier, airman, or rating (as the case may be) who had been discharged, or of the personal representatives of a person who had died⁸.

1 'Within or without Her Majesty's dominions' are the words used in the Army Act 1955 s 195(1) (as amended) and the Air Force Act 1955 s 195(1) (as amended). As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707. In the Naval Discipline Act 1957, the words used are 'within or without the United Kingdom': see s 98(1) (amended by the Armed Forces Act 1971 s 15(2)). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 'Acquire' means buy, take in exchange or in pawn or otherwise receive (whether the receiving is otherwise lawful or not): Army Act 1955 s 195(5); Air Force Act 1955 s 195(5); Naval Discipline Act 1957 s 98(3).

3 'Le any chattel of any description belonging to Her Majesty issued for use for naval, military or air force purposes or held in store to be so issued when required, or which had at some past time so belonged and had been so issued or held: Army Act 1955 s 195(5); Air Force Act 1955 s 195(5); Naval Discipline Act 1957 s 98(3). The effect of the reference to chattels which had so belonged, and had been so issued or held 'at some past time' is that once a chattel has belonged to the Crown, and has been issued or held for naval, military or air force purposes, it remains within the scope of this group of offences, notwithstanding through how many hands it may subsequently have passed.

4 'Dispose' means sell, give in exchange, pledge or otherwise hand over (whether the handing over is otherwise lawful or not): Army Act 1955 s 195(5); Air Force Act 1955 s 195(5); Naval Discipline Act 1957 s 98(3).

5 A person guilty of an offence under these provisions is liable on summary conviction to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding three months, or to both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both: Army Act 1955 s 195(2); Air Force Act 1955 s 195(2); Naval Discipline Act 1957 s 98(2) (all amended by virtue of the Criminal Law Act 1977 s 32(1); and the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 43 note 7 ante. As to the place of trial of such an offence see para 60 post. As to the fines which may be imposed by colonial courts see para 40 note 7 ante. Cf the offences that may be committed by persons subject to military or air force law or to the Naval Discipline Act 1975 (see para 407 post).

6 'Le by the transaction with which he is charged or by some earlier transaction.

7 As to the Defence Council see para 2 ante.

8 Army Act 1955 s 195(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Air Force Act 1955 s 195(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Naval Discipline Act 1957 s 98(1) (amended by the Armed Forces Act 1976 s 15(2); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). A constable may seize any property which he has reasonable grounds for suspecting to have been the subject of the

offence: Army Act 1955 s 195(3); Air Force Act 1955 s 195(3); Naval Discipline Act 1957 s 106(1) (all amended by the Police and Criminal Evidence Act 1984 ss 26(1), 119, Sch 6 Pt I para 8, Sch 7). 'Constable' includes any person (whether within or outside the United Kingdom) having powers corresponding with those of a constable but does not include a provost officer or a person exercising authority under or on behalf of a provost officer: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1) (definition amended by the Armed Forces Act 2001 s 34, Sch 6 para 49). For the meaning of 'provost officer' see para 403 note 3 post. As to the construction of the words 'has reasonable grounds for' see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 21. A search warrant may be granted to search for any such property as is suspected of being the subject of such an offence as in the case of stolen goods; and any such property which is found must be seized, and the person in whose possession or keeping it is found must be brought before a magistrates' court: Army Act 1955 s 195(4); Air Force Act 1955 s 195(4); Naval Discipline Act 1957 s 106(2). For this purpose, property is deemed to be in a person's possession if he has it under his control, whether he has it for his own use or benefit or that of another: Army Act 1955 s 195(6); Air Force Act 1955 s 195(6); Naval Discipline Act 1957 s 106(3).

UPDATE

46-48 Illegal possession of official documents ... Illegal acquisition and disposal of service property

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(i) Offences in relation to the Armed Forces/49. Other offences by civilians.

49. Other offences by civilians.

In addition to the offences by civilians in relation to the armed forces mentioned in this title¹, including offences connected with courts-martial, naval disciplinary courts or standing civilian courts², there are various other offences by civilians in relation to the armed forces which are discussed elsewhere in this work. These include inciting mutiny in the armed forces, or disaffection amongst their members³; the unauthorised wearing of service uniforms⁴; the control or management of any organisation formed to usurp the functions of the armed forces⁵; and voting as, or as proxy for, a service voter when not entitled to do so⁶.

1 See paras 40-48 ante.

2 See paras 311, 466 post.

3 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 373.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 378, 491.

5 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 381.

6 See ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) para 703.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(ii) Offences within the Jurisdiction of Naval Courts-Martial Abroad/50. Spying or seducing a member of the naval forces from his allegiance to the Crown.

(ii) Offences within the Jurisdiction of Naval Courts-Martial Abroad

50. Spying or seducing a member of the naval forces from his allegiance to the Crown.

Every person not subject to the Naval Discipline Act 1957¹ who, while on board any of Her Majesty's ships or vessels², or while within any of Her Majesty's naval establishments³ outside the United Kingdom⁴ and colonies⁵, acts as a spy for the enemy⁶, is liable on conviction by court-martial to imprisonment⁷. Every such person who in like circumstances endeavours to seduce any person subject to the Naval Discipline Act 1957 from his duty or allegiance to Her Majesty is liable on conviction by court-martial to imprisonment⁸.

1 As to the persons subject to the Naval Discipline Act 1957 see para 306 post.

2 For the meanings of 'Her Majesty's ships' and 'Her Majesty's vessels' see para 6 note 3 ante.

3 For the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

4 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 As to the meaning of 'colony' see para 20 note 4 ante.

6 As to the meaning of 'enemy' see para 305 note 1 post.

7 Naval Discipline Act 1957 s 93 (amended by the Armed Forces Act 1976 s 15(1); and the Armed Forces Act 1981 ss 17, 28(2), Sch 5 Pt II). Spying is also an offence under the Official Secrets Act 1911 s 1 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 478 et seq. Communication with or the giving of intelligence to the enemy by a person subject to the Naval Discipline Act 1957 is an offence under that Act: see s 3(1)(a) (as substituted); and para 393 post.

8 Ibid s 94 (amended by the Armed Forces Act 1976 s 15(1)). Such conduct is also an offence under the Incitement to Disaffection Act 1934 s 1: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 373.

UPDATE

50-51 Offences within the jurisdiction of [Court Martial] abroad

Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(3) CIVILIANS' OFFENCES/(ii) Offences within the Jurisdiction of Naval Courts-Martial Abroad/51. Power of arrest and jurisdiction.

51. Power of arrest and jurisdiction.

Any person who is found committing, is alleged to have committed, or is reasonably suspected of having committed, an offence of spying or seduction from duty or allegiance in ships or in naval establishments abroad¹ may be arrested by any officer or rating subject to the Naval Discipline Act 1957², or by any provost officer or any person legally exercising authority under, or on behalf of, a provost officer³. Any such offence may be tried and punished by court-martial under the provisions of the Naval Discipline Act 1957⁴.

1 le an offence under the Naval Discipline Act 1957 s 93 (as amended) or s 94 (as amended): see para 50 ante.

2 As to the persons subject to the Naval Discipline Act 1957 see para 306 post.

3 Ibid s 95(1). For the meaning of 'provost officer' see para 403 note 3 post.

4 Ibid s 95(2). The relevant provisions are those in Pt II (ss 45-92) (as amended) (except the provisions relating to summary trial) (see para 448 et seq post): s 95(2) (amended by the Armed Forces Act 2001 s 38, Sch 7 Pt I).

UPDATE

50-51 Offences within the jurisdiction of [Court Martial] abroad

Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (4) CIVIL LAW AND AUTHORITIES IN RELATION TO THE ARMED FORCES/(i) In general/52. Validity of civil law in relation to the armed forces.

(4) CIVIL LAW AND AUTHORITIES IN RELATION TO THE ARMED FORCES

(i) In general

52. Validity of civil law in relation to the armed forces.

Members of the armed forces, while subject to the Naval Discipline Act 1957 or to military or air force law¹, are not divested of the civil rights and duties of citizens in general² although they enjoy certain privileges and are subject to certain disabilities³.

Unless expressly exempted by statute, members of the armed forces are in all respects amenable to, and entitled to claim the protection of, the civil tribunals and ordinary law of the United Kingdom⁴.

1 See para 3 ante.

2 *Burdett v Abbot* (1812) 4 Taunt 401 at 449-450, Ex Ch, per Lord Mansfield CJ. See also para 3 ante.

3 See eg *Wood v Victoria Pier and Pavilion (Colwyn Bay) Co Ltd* (1913) 29 TLR 317. As to the disqualifications, privileges and exemptions of members of the armed forces see paras 27 et seq ante, 78 et seq post; and as to pay, pensions and rights related to them see paras 162 et seq, 217-218, 263 et seq post.

4 *Burdett v Abbot* (1812) 4 Taunt 401 at 449-450, Ex Ch, per Lord Mansfield CJ. See also para 3 ante. As to the protection accorded to persons subject to the Naval Discipline Act 1957 or to military or air force law from trial in a civil court on a charge of an offence substantially the same as one for which they have been dealt with either summarily or by a court-martial, a naval disciplinary court or a standing civilian court see paras 58-59 post; as to the protection accorded to such persons from trial by a court-martial, etc, where the offence has already been dealt with by a civil court see para 57 post; and as to the protection accorded to men of the reserve forces and members of the auxiliary forces against double trial where an offence is cognisable both by a court-martial and a magistrates' court see para 59 post. As to the prohibition of the trial by court-martial of charges of treason, murder, manslaughter, treason felony, rape, an offence under any of the Geneva Conventions, an offence under the Biological Weapons Act 1974 s 1 (as amended), or an offence under the International Criminal Court Act 2001 s 51 or s 52, where the offence is alleged to have been committed in the United Kingdom by a member of the armed forces see para 422 post. As to offences committed abroad: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1054, 1059 et seq. The domicile of a person who is sent abroad as a member of the armed forces is not affected (see *Re Macreight, Paxton v Macreight* (1885) 30 ChD 165; and the other cases cited in CONFLICT OF LAWS vol 8(3) (Reissue) para 49), but he is not precluded from the acquisition of a domicile of choice in the place where he is sent on duty, if he has the intention to make his permanent home in that place (see *Donaldson (or Nichols) v Donaldson* [1949] P 363; *Stone v Stone* [1959] 1 All ER 194, [1958] 1 WLR 1287; and CONFLICT OF LAWS vol 8(3) (Reissue) para 49). This rule applies equally to aliens serving in the armed forces, for domicile is distinct from nationality: *Stone v Stone* supra. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (4) CIVIL LAW AND AUTHORITIES IN RELATION TO THE ARMED FORCES/(i) In general/53. Civil liabilities of service authorities.

53. Civil liabilities of service authorities.

A person subject to service law¹ is not entitled to seek redress in the civil courts for an infringement of rights given to him, not by the ordinary law, but only by service law; in such a case the aggrieved person must look to the service code for the remedy and its enforcement, although in certain cases he may make a claim to an employment tribunal². Even if a court-martial or other service tribunal, or an officer, does, or causes to be done, to a person subject to service law an act amounting to a common law wrong, such as an assault or false imprisonment, then, so long as the act causing the personal injury or loss of liberty is within the jurisdiction of its perpetrator and occurs in the course of service discipline, an action will not lie in respect of it merely on the ground that what was done was malicious and without reasonable cause³, but only for an abuse of authority carried out from motives of cruelty or oppression⁴. However, if any such authority, acting without or in excess of jurisdiction, inflicts or brings about a common law wrong on a person subject to service law, even though it purports to be done in the course of actual service discipline, an action for damages will lie against the authority or individual responsible⁵.

Complaints made to the proper authorities for the purpose of obtaining redress of a grievance would seem to be absolutely privileged if made in good faith⁶.

The evidence of witnesses given before a naval, military or air force court-martial cannot be made the subject of an action for damages⁷.

The Ministry of Defence may be liable to an individual in common law nuisance for noise created by military aircraft⁸.

The Ministry of Defence must make decisions affecting ex-servicemen based on principles of equality⁹.

1 For this purpose, 'service law' may be taken to include the Naval Discipline Act 1957, military law and air force law and also any orders or regulations affecting the day to day conduct of service life made by lawful authority. As to discipline in the armed forces generally see para 302 et seq post.

2 *Dawkins v Lord Rokeby* (1873) LR 8 QB 255 at 270-271, Ex Ch, per Kelly CB; explained in *Heddon v Evans* (1919) 35 TLR 642 at 643 per McCardie J. See also *Barwis v Keppel* (1766) 2 Wils 314; *Johnstone v Sutton* (1786) 1 Term Rep 510 at 548-550, Ex Ch, per Lord Mansfield CJ and Lord Loughborough (affd (1787) 1 Term Rep 784, HL); *Re Mansergh* (1861) 1 B & S 400 at 406 per Cockburn CJ; *Ex p Roberts* (1879) Times, 11 June; *R v Army Council, ex p Ravenscroft* [1917] 2 KB 504, DC (mandamus to require the Army Council to reassemble a Court of Inquiry to rehear the applicant's case was refused, there being no infringement of a common law right). See also *Fraser v Hamilton* (1917) 33 TLR 431, CA (claim for damages by a naval officer against the Second Sea Lord, alleging that he had maliciously and without probable cause procured the plaintiff's retirement from the navy, was struck out as disclosing no cause of action). The same claim was repeated in *Fraser v Balfour* (1917) 34 TLR 134, CA, and again struck out. This latter decision was reversed in the House of Lords, but only because the House considered that the question whether matters of naval discipline were cognisable in the civil courts was still open in the House of Lords, and should be decided after the facts had been ascertained at a trial: see *Fraser v Balfour* (1918) 34 TLR 502 at 503, HL, per Lord Finlay LC (it appears that the trial thus sanctioned never took place). See further *Woods v Lyttleton* (1909) 25 TLR 665, CA; *R v Secretary of State for War, ex p Martyn* [1949] 1 All ER 242; *R v Officer Commanding Depot Battalion RASC Colchester, ex p Elliott* [1949] 1 All ER 373; *Groves v Commonwealth of Australia* (1982) 150 CLR 113, Aust HC. As to claims that may be brought before an employment tribunal see para 314 post. See also *R v Army Board of the Defence Council, ex p Anderson* [1992] QB 169 (decided before the amendments made by the Armed Forces Act 1996 ss 21, 23, 24, 26 giving access to an employment tribunal). As to redress of complaints generally see para 314 post.

3 *Heddon v Evans* (1919) 35 TLR 642 at 645 per McCardie J, citing cases referred to in note 2 supra; and see *Marks v Frogley* [1898] 1 QB 888, CA; *Edmondson v Rundle* (1903) 19 TLR 356. The same principle applies to defamatory statements made by naval, military or air force officers in discharge of their duty, where the ordinary law as to absolute and qualified privilege is applied: see LIBEL AND SLANDER vol 28 (Reissue) para 106.

4 See *Wall v M'Namara* (1799) and *Swinton v Molloy* (1783), each cited in *Johnstone v Sutton* (1786) 1 Term Rep 510 at 536-538, Ex Ch. Cf *O'Connor v Isaacs* [1956] 2 QB 288 at 312, [1956] 1 All ER 513 at 524 per Diplock J. Where liability in such a case does exist, it does not extend to the wrongdoer's superior officer unless he has specifically ordered or ratified the wrongful act so as to make it his own: *Fraser v Balfour* (1917) 34 TLR 134, CA (on appeal (1918) 34 TLR 502, HL) (an action by a naval officer against the First Lord of the Admiralty for damages for false imprisonment was held not maintainable because the defendant had neither authorised nor ratified the action of his subordinate; the relationship between a senior and junior servant of the Crown is not that of master and servant, as both are servants of the Crown itself); *Pritchard v Ministry of Defence* (1995) Times, 27 January. However, since the passing of the Crown Proceedings Act 1947 the Crown will itself be held liable for the torts of its servants: see s 2(1)(a); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 382; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 103. Whether a subordinate can escape liability by pleading that he acted under superior orders, not manifestly illegal, is not clearly settled, but several judicial dicta suggest that he cannot: see *Dawkins v Lord Rokeby* (1866) 4 F & F 806 at 831 per Willes J; *Keighly v Bell* (1866) 4 F & F 763 at 790, 805 per Willes J; *Marks v Frogley* [1898] 1 QB 396 at 404-405 per Kennedy J.

5 *Heddon v Evans* (1919) 35 TLR 642 at 645 per McCardie J. See also *Sutherland v Murray* (1783) cited in *Johnstone v Sutton* (1786) 1 Term Rep 510 at 538; *Warden v Bailey* (1814) 4 Taunt 67 (an action was permitted against a colonel of a regiment for false imprisonment of a sergeant whom the defendant had confined for disobedience to an order which he had no authority to give) (see also the other unreported cases cited in argument in *Warden v Bailey* supra at 69-70, 74-75); *Glynn v Houston* (1841) 2 Man & G 337; *Sinclair v Broughton and Government of India* (1882) 47 LT 170, PC.

6 This applies whether the claimant is himself subject to service authority or not: *R v Baillie* (1778) 21 State Tr 1 at 69 per Lord Mansfield CJ (court refused to sanction a criminal information for libel against the Lieutenant Governor of Chelsea Hospital for addressing to the general governors of the hospital a complaint against abuses there); *Fairman v Ives* (1822) 5 B & Ald 624 (a complaint by a member of the public, a creditor of an army officer, addressed to the Secretary at War alleging the officer's non-payment of a debt was held to be privileged). The privilege is lost if the complaint is addressed to the wrong quarter, and it will then be actionable if defamatory: *Harwood v Green* (1827) 3 C & P 141. See also *Heddon v Evans* (1919) 35 TLR 642 at 646-647 per McCardie J.

7 *Dawkins v Lord Rokeby* (1873) LR 8 QB 255, Ex Ch (affd (1875) LR 7 HL 744), where it was held that evidence given by an officer before a military court of inquiry was privileged, as most certainly was evidence given before a court-martial. The privilege also extends to observations by the members of a court-martial appended to their finding: *Jekyll v Moore* (1806) 2 Bos & PNR 341. A witness before an army or air force court-martial or any other person whose duty it is to attend before the court is entitled to the same immunities and privileges as a witness before the High Court in England: Army Act 1955 s 100; Air Force Act 1955 s 100; Naval Discipline Act 1957 s 64D (added by the Armed Forces Act 1996 s 5, Sch 1 para 63).

8 See *Dennis v Ministry of Defence* [2003] EWHC 793 (QB), [2003] 19 EG 118 (CS) (noise caused by low flying military aircraft an actionable nuisance and a violation of the claimant's private life). See AIR LAW vol 2 (2008) PARA 658; NUISANCE vol 78 (2010) PARA 125. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

9 See *Gurung v Ministry of Defence* [2002] EWHC (Admin) 2463; *R (on the application of Purja) v Ministry of Defence* [2003] EWHC (Admin) 445.

UPDATE

53 Civil liabilities of service authorities

NOTE 1--As to the meaning of 'subject to service law' see now the Armed Forces Act 2006 s 374.

TEXT AND NOTE 8--Members of the armed forces and the Ministry of Defence may be liable in negligence for acts done while carrying out policing and peacekeeping functions: *Bici v Ministry of Defence* [2004] EWHC 786 (QB), [2004] All ER (D) 137 (Apr).

NOTE 9--See also *R (on the application of Gurung) v Ministry of Defence* [2008] EWHC 1496 (Admin), [2008] All ER (D) 15 (Jul).

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54. Criminal liability of service authorities.

Where death or injury to the person results from the excessive exercise of naval, military or air force authority, or from acts done by naval, military or air force authorities without jurisdiction, the responsible parties are liable to criminal proceedings¹.

¹ *R v Wall* (1802) 28 State Tr 51 (colonial governor was convicted of murder for ordering an excessive flogging which caused death). See also *Warden v Bailey* (1811) 4 Taunt 67 at 77 per Heath J. A mistaken impression of duty will not amount to a defence if the officer or other person exercising authority was not otherwise justified in his action which caused the fatality: *R v Maxwell* (1807) Buchan, Pt II, 3. It seems doubtful that a subordinate can plead in defence that he acted on the orders, not manifestly illegal, of a superior authority to justify an injury inflicted, at least where the injured person is a civilian. The better view appears to be that this is no defence in itself, although it may give rise to a defence on other grounds, eg mistake of fact, where the order led the accused to suppose that what he was told to do could be done with safety: see *R v Trainer* (1864) 4 F & F 105 at 112, 115-117 per Willes J; *Keighly v Bell* (1866) 4 F & F 763 at 790, 805 per Willes J.

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55. Restriction on rights against the Crown in relation to the armed forces.

The Crown is no longer immune from general liability in tort¹. However, in relation to anything suffered by a person in consequence of an act or omission committed before 15 May 1987², there were severe restrictions on the right of action in tort of a civilian against a member of the armed forces or the Crown, and of any member of those forces against another such member or the Crown³. In particular no act or omission by a member of the armed forces while on duty as such could render either himself or the Crown liable in tort for causing any personal injury to, or the death of, another person, in so far as the injury or death was due to anything suffered by that other person while he was a member of the armed forces and while he was on duty as such, or, although not on duty as such, while he was on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces or training in civil defence⁴. A member of the armed forces or his representative had no right to bring any action in tort against the Crown, or any officer of the Crown⁵, in respect of personal injury or death due to anything suffered in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle, or of any equipment or supplies used for those purposes⁶.

The prerogative and statutory powers and authorities of the Crown existing prior to the passing of the Crown Proceedings Act 1947, and in particular those powers or authorities exercisable by the Crown in times of peace or war for the purposes of defence, training or maintaining the efficiency of any of the armed forces, are unaffected by the removal of the Crown's general immunity⁷.

The provisions restricting the right of action in tort may be revived at any time after 15 May 1987 by order of the Secretary of State for prescribed purposes and, where the provisions have been revived in pursuance of such an order, the Secretary of State may by order provide for them to cease to have effect either for all purposes for which they have effect or such of them as may be prescribed⁸. No order reviving the provisions may be made by the Secretary of State unless it appears to him that it is necessary or expedient to do so by reason of any imminent national danger or of any great emergency that has arisen or for the purposes of any warlike operations in any part of the world outside the United Kingdom⁹ or of any other operations which are to be carried out in connection with the warlike activity of any persons in any such part of the world¹⁰.

1 See the Crown Proceedings Act 1947 ss 1, 2 (as amended), s 40(2)(b), (c) (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 382; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 103.

2 I.e the date the Crown Proceedings (Armed Forces) Act 1987 was passed. As to the position following 15 May 1987 see the text and notes 8-10 infra. References to anything suffered by any person in consequence of an act or omission committed before 15 May 1987 include references to anything which would not otherwise be regarded as suffered in consequence of an act or omission but is suffered in consequence of the nature or condition at a time before that date of any land, premises, ship, aircraft, hovercraft or vehicle or of any equipment or supplies: s 5(2).

3 See the Crown Proceedings Act 1947 s 10(1), (2) (s 10 repealed by the Crown Proceedings (Armed Forces) Act 1987 s 1 except in relation to anything suffered by a person in consequence of an act or omission committed before 15 May 1987). As to the general relationship between the Crown and the armed forces see para 4 ante.

4 See the Crown Proceedings Act 1947 s 10(1) (repealed: see note 3 supra). In order that these immunities subsisted, it was necessary for the Secretary of State to certify that the death or injury suffered had been or would be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant, Order in Council or Order of Her Majesty relating to the disablement or death of members of the force of which the injured or deceased person was a member: see the Crown Proceedings Act 1947 s 10(1)(b) (repealed: see note 3 supra). As to the Secretary of State see para 2 ante. A member of the forces was not exempted from liability in tort in any case where the court was satisfied that his act or omission was not connected with the execution of his duties as such a member: s 10(1) proviso (repealed: see note 3 supra). The purpose of the certificate was to declare that death was attributable to service; it was irrelevant that there was no person entitled to receive an award: *Bell v Secretary of State for Defence* [1986] QB 322, [1985] 3 All ER 661, CA (no Crown immunity where soldier injured on Crown land died in a civilian hospital due to an army doctor's negligence in failing to forward medical records; injury therefore occurred in hospital and not on Crown land). See also *Pearce v Secretary of State for Defence* [1988] AC 755, [1988] 2 All ER 348, HL (an action by a serviceman injured during Atomic Energy Authority nuclear tests was not barred by the Crown Proceedings Act 1947 s 10(2) even though the Authority's liability had been transferred to the Secretary of State and such action constituted proceedings against the Crown); *Derry v Ministry of Defence* [1999] PIQR P204, CA (soldier claimed army doctor failed to diagnose illness; Crown immune from liability); *Re Post Traumatic Stress Disorder Group Litigation, Multiple Claimants v Ministry of Defence* [2003] EWHC 1134 (QB) (psychiatric injuries incurred as a consequence of exposure to stress and trauma of combat, and Ministry of Defence's failure to take steps to prevent or ameliorate the effects, were continuing states of affairs which arose when the claimants were on duty or on Crown property and action was therefore barred by the Crown Proceedings Act 1947 s 10). As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

The Crown Proceedings Act 1947 s 10 (now repealed: see note 3 supra) has been held to be not incompatible with a claimant's rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 25 March 1957; TS 1 (1973); Cmd 5179) art 6(1) and the Human Rights Act 1998 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134 et seq), since it was a substantive limitation on claims against the Crown in tort and not a procedural bar: see *Matthews v Ministry of Defence* [2003] UKHL 4, [2003] 1 All ER 689, [2003] 2 WLR 435. See *Quinn v Ministry of Defence* [1998] PIQR P387, CA. See also Application 10096/82 *Pinder v United Kingdom* (1984) 7 EHRR 464 ('the creation of a pension entitlement to provide certain coverage of the needs of injured servicemen without inquiry as to fault ... cannot be regarded as either arbitrary or unreasonable'); Application 10475/83 *Dyer v United Kingdom* (1984) 7 EHRR 469 (following *Pinder v United Kingdom* supra). Cf *Mulcahy v Ministry of Defence* [1996] QB 732, [1996] 2 All ER 758, CA (where the Crown Proceedings (Armed Forces) Act 1987 applies (and the Crown Proceedings Act 1947 s 10 is not revived under the Crown Proceedings (Armed Forces) Act 1987 s 2) (see the text and notes 8-10 infra), a soldier is unable to recover damages when injured by the alleged negligence of a fellow soldier; no duty of care arises in a war zone when the claimant is taking part in warlike operations).

As to the non-applicability of the Criminal Injuries (Overseas) Scheme, an ex gratia scheme established by the Ministry of Defence, see *R v Ministry of Defence, ex p Walker* [2000] 2 All ER 917, [2000] 1 WLR 806, HL (British soldier in peace-keeping force injured from military activity by a warring faction in Bosnia). As to criminal injuries compensation see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2033 et seq. See also *Jebson v Ministry of Defence* [2000] 1 WLR 2055, CA; *Barrett v Ministry of Defence* [1995] 3 All ER 87, [1995] 1 WLR 1217, CA; and para 93 post.

As to the training of armed forces for civil defence see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 539 et seq.

5 'Officer', in relation to the Crown, includes any servant of Her Majesty and accordingly includes a Minister of the Crown: Crown Proceedings Act 1947 s 38(2).

6 Ibid s 10(2) (repealed: see note 3 supra). For the immunities to apply, it was necessary for the Secretary of State to certify as described in note 4 supra. The fact that an award is later refused is irrelevant: *Adams v War Office* [1955] 3 All ER 245, [1955] 1 WLR 1116. As to when such awards are made see para 277 post. Conclusive evidence as to whether a person was or was not on duty, or that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, being used for the specified purposes, is afforded by a certificate of the Secretary of State: see the Crown Proceedings Act 1947 s 10(3) (repealed: see note 3 supra).

7 Ibid s 11(1). A certificate of a Secretary of State is conclusive evidence in any proceedings that any act or omission in question was necessary for the exercise of the prerogative of the Crown: see s 11(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). It is difficult to see in what way the Crown Proceedings Act 1947 could be thought to abridge or extinguish the pre-existing powers or authorities of the Crown and the precise operation of the Crown Proceedings Act 1947 s 11 (as amended) is therefore obscure. Where any damage has been done by a Queen's ship or aircraft, an action must be brought in personam as no proceedings in rem lie against the Crown; and nothing in the Crown Proceedings Act 1947 authorises the arrest, detention or sale of any of Her Majesty's ships or aircraft, or of any cargo or other Crown property, or gives to any person any lien on any such ship, aircraft, cargo or other property: s 29(1). For the meanings of 'Her Majesty's ships' and 'Her Majesty's aircraft' in the Crown Proceedings Act 1947 see s 38(2);

and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 103. See further SHIPPING AND MARITIME LAW. The statutory limitation of liability of an owner of ships for damage caused without the owner's fault or privity extends to the Crown in respect of Her Majesty's ships and ships managed on her behalf: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1065. For limitations on the right to claim for salvage services rendered to Her Majesty's ships or aircraft, and as to claims for salvage rendered by or on behalf of Her Majesty see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 118; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 890.

8 Crown Proceedings (Armed Forces) Act 1987 s 2(1). An order describing purposes for which the effect of the Crown Proceedings Act 1947 s 10 (see the text and notes 2-6 supra) is to be revived, or for which it is to cease to have effect, may describe those purposes by reference to any matter whatever and may make different provision for different cases, circumstances or persons: Crown Proceedings (Armed Forces) Act 1987 s 2(3). Nothing in any order may revive the effect of the Crown Proceedings Act 1947 s 10, or provide for that provision to cease to have effect, in relation to anything suffered by a person in consequence of an act or omission committed before the date on which the order comes into force: Crown Proceedings (Armed Forces) Act 1987 s 2(4). The power to make an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 2(5).

9 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

10 Crown Proceedings (Armed Forces) Act 1987 s 2(2).

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(ii) Control over Forces' Courts

56. Appeal and prerogative orders.

Courts-martial¹, like the inferior civil courts, are subject to the supervision and control of the civil courts of higher degree², both by way of appeal to the Courts-Martial Appeal Court³ and in a limited manner through the prerogative orders obtained on judicial review⁴. The creation of the Courts-Martial Appeal Court, which has power to consider questions of law and questions as to the jurisdiction of courts-martial, as well as to hear appeals upon their merits, has largely obviated the need to apply for those prerogative orders⁵. The writ of habeas corpus is available to any person in custody by order of a service tribunal, to test the validity of his imprisonment⁶.

1 As to courts-martial see para 448 et seq post. As to the service courts of visiting forces see para 143 post.

2 This control does not exist if a state of actual war, justifying the application of martial law, exists, although whether it does exist is for the civil courts to decide: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 821. See also para 3 ante. Contempt of a court-martial by a person not subject to the Naval Discipline Act 1957, or to military or air force law, is punishable by any court of law which has jurisdiction in the place where the contempt is alleged to have been committed and to which the offence is certified by the president of the court-martial: see the Army Act 1955 s 101 (as amended); the Air Force Act 1955 s 101 (as amended); the Naval Discipline Act 1957 s 65 (as amended); and paras 467, 505 post. The Queen's Bench Division may also punish contempt of a court-martial under its inherent supervisory jurisdiction: see CONTEMPT OF COURT vol 9(1) (Reissue) para 457.

3 The Courts-Martial Appeal Court, which is a civil court, exists and operates by virtue of the Courts-Martial (Appeals) Act 1968. As to its constitution and powers see COURTS vol 10 (Reissue) para 801 et seq. As to applications and appeals to this court, and from it to the House of Lords, see para 532 et seq post.

4 As to the prerogative orders generally see JUDICIAL REVIEW vol 61 (2010) PARA 687 et seq; CROWN PROCEEDINGS AND CROWN PRACTICE. As to judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1530. Judicial review of the jurisdiction of a court-martial in matters relating to the trial of an offence or appeals from a standing civilian court are excluded: Supreme Court Act 1981 s 29(3A) (added by the Armed Forces Act 2001 s 23). As to standing civilian courts see para 520 et seq post.

5 As to the limited scope of quashing orders in service matters see JUDICIAL REVIEW vol 61 (2010) PARA 697.

6 As to habeas corpus see ADMINISTRATIVE LAW; CIVIL PROCEDURE vol 12 (2009) PARA 1531.

UPDATE

56 Appeal and prerogative orders

NOTE 2--Army Act 1955, Air Force Act 1955, and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

NOTE 4--1981 Act s 29(3A) substituted: Armed Forces Act 2006 Sch 16 para 93. Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

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57. Effect on court-martial of civil trial for the same offence.

A person subject to military or air force law who has been tried¹ for an offence by a competent civil court², wherever situated, or by a court-martial³, or who has had an offence committed by him taken into consideration by a competent civil court in the United Kingdom⁴, or by a court-martial when sentencing him, is not liable to be tried by court-martial or to be dealt with summarily⁵, in respect of the same, or substantially the same offence⁶. A person subject to the Naval Discipline Act 1957 who has been convicted or acquitted of an offence by a civil court, wherever situated, or has had an offence committed by him taken into consideration when being sentenced by a civil court in the United Kingdom, is not liable to be tried under that Act for the same, or substantially the same, offence⁷.

1 It is submitted that 'tried' means tried in the proper sense, ie that a trial has proceeded to conviction or acquittal, and not that the accused has merely appeared before a civil court and then been handed over to the service authorities to be dealt with by them.

2 'Civil court' means a court of ordinary criminal jurisdiction but does not, except where otherwise expressly provided, include any such court outside Her Majesty's dominions: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1). By virtue of the words 'wherever situated' in the text, 'civil court' in this instance includes a civil court whether within or outside Her Majesty's dominions. As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707. In the Reserve Forces Act 1996 Pt X (ss 95-109), a 'civil court' refers to a magistrates' court in England and Wales, a sheriff sitting as a court of summary jurisdiction in Scotland or a court of summary jurisdiction in Northern Ireland: s 109.

3 Ie a court-martial held under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957: Army Act 1955 s 134(1)(a); Air Force Act 1955 s 134(1)(a). The exemption from retrial also extends to a person who has been tried by a standing civilian court: Armed Forces Act 1976 s 6(17), Sch 3 para 16. It also extends to a person who has had an offence condoned by his commanding officer: see *R v Bissett* [1980] 1 WLR 335, C-MAC; and paras 486, 521 post.

4 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 Ie by his commanding officer or the appropriate superior authority (see para 355 post). See *R v Army Board of the Defence Council, ex p DB* (24 July 2000) Lexis (administrative action by a commanding officer permissible following acquittal before a civil court).

6 Army Act 1955 s 134(1)(a), (aa); Air Force Act 1955 s 134(1)(a), (aa) (the Army Act 1955 s 134(1)(a) and the Air Force Act 1955 s 134(1)(a) substituted by the Armed Forces Act 1966 s 26; and amended by the Armed Forces Act 1991 s 26, Sch 2 para 5; and the Army Act 1955 s 134(1)(aa) and the Air Force Act 1955 s 134(1)(aa) added by the Armed Forces Act 1966 s 26). See also para 486 post. Thus, for instance, a soldier who has been tried by a civil court for taking a vehicle, ie a service vehicle, without authority, would not subsequently be tried by court-martial for improper use of the vehicle; but if he were tried in the civil court for careless driving of the vehicle, he could be tried subsequently by court-martial for improper use of it (see the Manual of Military Law (12th Edn, 1972) p 449). The principle which is followed is that a further trial is precluded where there has been a judicial decision on the same accusation in substance, and where the question which would be in dispute at a second trial has been decided at the first. See *R v Morris* (1867) LR 1 CCR 90, where a previous conviction for common assault was no bar to a subsequent prosecution for manslaughter, as the victim of the assault had died allegedly of his injuries after the conviction for the assault, and the matter in dispute at the second trial, ie the cause of the death, had not been decided at the first. See also *R v Barron* [1914] 2 KB 570, CCA; *R v Thomas* [1950] 1 KB 26, [1949] 2 All ER 662, CCA; *R v Hogan* [1960] 2 QB 513, [1960] 3 All ER 149, CCA. As to proof of the outcome of a trial in a civil court see para 387 post.

7 Naval Discipline Act 1957 s 129(2) (amended by the Armed Forces Act 1966 s 35; and the Armed Forces Act 1971 s 55). No person subject to the Naval Discipline Act 1957 who is convicted by a civil court or has had an offence committed by him taken into consideration is, by reason of the conviction or the offence, to suffer

any loss of seniority or of rate, or privilege in respect of leave, or of pay or service (except such as may be involved in being in custody before trial, attending trial or serving any custodial sentence awarded): s 129(2) (as so amended). Nothing in s 129(2) (as amended), however, affects the power to discharge a person from Her Majesty's service if his services are no longer required, and a rating who would otherwise be so discharged may on his own application be reverted in lieu of being so discharged: s 129(2) proviso.

UPDATE

57 Effect on court-martial of civil trial for the same offence

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, Naval Discipline Act 1957, Armed Forces Act 1976 s 6 repealed: Armed Forces Act 2006 Sch 17. As to civilian proceedings barring subsequent service proceedings, see now the Armed Forces Act 2006 s 66.

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(iii) Jurisdiction of Civil Courts

58. Subjection of armed forces to the jurisdiction of civil courts.

In general, persons subject to the Naval Discipline Act 1957 or to military or air force law¹ are not exempt from the jurisdiction of the civil courts² in respect of offences under common or statute law³.

1 See paras 306-308 post.

2 For the meaning of 'civil court' see para 57 note 2 ante.

3 See the Army Act 1955 s 133(1) (substituted by the Armed Forces Act 1966 s 25(1)); the Air Force Act 1955 s 133(1) (substituted by the Armed Forces Act 1966 s 25(1)); and the Naval Discipline Act 1957 s 129(1). As to the statutory provisions which protect a person who has been dealt with by a service tribunal or authority under military or air force law, or the Naval Discipline Act 1957, from afterwards being tried by a civil court for the same or substantially the same offence see para 59 post.

The jurisdiction of the civil courts of certain colonial territories to try members of Her Majesty's United Kingdom naval, military or air forces, or of a civilian component of any of those forces, for offences against the law of the territory committed whilst on duty, and for certain such offences committed whilst off duty, has been withdrawn: see the United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965, SI 1965/1203, arts 2(1), 3, Schedule (amended by SI 1967/226; SI 1967/227; SI 1967/229; SI 1968/1377; SI 1969/1500; SI 1990/239; SI 1990/240). The 'off duty' offences withdrawn from the jurisdiction of the local courts are: (1) offences against the person, where the person or persons in relation to whom the offence is alleged to have been committed had at the material time a relevant association with the United Kingdom forces; (2) offences against property, where the whole of the property in question was that of a department of the United Kingdom government, or of some other authority of the United Kingdom, or of Her Majesty's forces, or of any organisation operating for the benefit of those forces, or of a person having a relevant association with them: United Kingdom Forces (Jurisdiction of Colonial Courts) Order 1965, SI 1965/1203, art 3(1)(b), (c). 'Person having a relevant association with Her Majesty's forces' means a member of, or a member of a civilian component of, any of Her Majesty's forces or a dependant of such a member: see art 2(6). The civil courts may, however, exercise jurisdiction in a case where the officer commanding Her Majesty's United Kingdom forces in the territory has notified the governor that it is not proposed that the offence should be dealt with by a service court: art 3(2)(a). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

The jurisdiction of the civil courts of the United Kingdom is subject to restrictions in relation to members of visiting forces and their civilian components, so far as concerns offences against United Kingdom law which either arise out of and in the course of their duty, or are against a person or persons who at the material time had a relevant association with a visiting force of the offender's country, or against the property of such a person or of the alleged offender's country or of an authority of that country: see the Visiting Forces Act 1952 ss 1, 3, 4 (ss 1, 3 as amended); and paras 144-149 post.

UPDATE

58 Subjection of armed forces to the jurisdiction of civil courts

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (4) CIVIL LAW AND AUTHORITIES IN RELATION TO THE ARMED FORCES/ (iii) Jurisdiction of Civil Courts/59. Restrictions on exercise of the jurisdiction.

59. Restrictions on exercise of the jurisdiction.

If a person subject to the Naval Discipline Act 1957¹ has been acquitted or convicted of an offence on trial by a court-martial, or on summary trial² under that Act, or has had an offence committed by him taken into consideration by a court-martial in sentencing him, he cannot be tried subsequently by a civil court³ for the same, or substantially the same, offence⁴. Similarly, where a person subject to military or air force law⁵ has been tried for an offence by a court-martial or a standing civilian court⁶, or has had an offence committed by him taken into consideration by a court-martial or a standing civilian court in sentencing him, or has been dealt with summarily⁷ by his commanding officer or the appropriate superior authority on a charge under the Army Act 1955 or the Air Force Act 1955, he cannot subsequently be tried by a civil court for the same, or substantially the same, offence⁸.

Under the Reserve Forces Act 1996, a person charged with an offence which is triable both by a court-martial and by a civil court may be tried either by a court-martial (or by an officer having power to deal summarily with the case) or by a civil court but not by both of them⁹.

1 As to persons subject to the Naval Discipline Act 1957 see para 306 post.

2 *le* under *ibid* s 52D (as added and amended): see para 350 post.

3 For the meaning of 'civil court' see para 57 note 2 ante.

4 Naval Discipline Act 1957 s 129(1) (amended by the Armed Forces Act 1966 s 35(1); the Armed Forces Act 1971 s 55(a); the Armed Forces Act 1996 s 5, Sch 1 para 93; and the Armed Forces Act 2001 s 38, Sch 7 Pt 1). As to the meaning of 'substantially the same offence' see para 57 note 6 ante. As to the effect of the annulment of the taking into consideration of another offence or other offences see note 8 *infra*.

5 See paras 307-308 post.

6 As to standing civilian courts see para 520 *et seq* post.

7 As to summary proceedings see para 348 *et seq* post.

8 Army Act 1955 s 133(1); Air Force Act 1955 s 133(1) (both substituted by the Armed Forces Act 1966 s 25(1); and amended by the Armed Forces Act 1991 s 26, Sch 2 para 5); Armed Forces Act 1976 s 6(17), Sch 3 para 16. As to the proof of the outcome of court-martial proceedings see para 387 post. For the purposes of the Army Act 1955 s 133 (as substituted and amended) and the Air Force Act 1955 s 133 (as substituted and amended), a person is not deemed to have had an offence taken into consideration by a court-martial or a standing civilian court in sentencing him if that sentence has been quashed or where the taking into consideration of an offence has been annulled by the reviewing authority: Army Act 1955 s 133(2)(b); Air Force Act 1955 s 133(2)(b) (both amended by the Armed Forces Act 1981 s 5(4); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt II). Where a case has been dealt with by a person's commanding officer it is deemed to have been dealt with summarily notwithstanding that the finding or award has been quashed on review or quashed or varied by the summary appeal court: Army Act 1955 s 133(2)(c); Air Force Act 1955 s 133(2)(c) (both amended by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 21). As to the summary appeal court see para 359 *et seq* post. It is submitted, however, that these provisions do not apply where the summary finding has been quashed for want of jurisdiction (eg where a commanding officer has failed to give the accused an opportunity to elect for trial by court-martial before dealing with him summarily, where he has that right: see the Army Act 1955 s 76AA (as added); the Air Force Act 1955 s 76AA (as added); and para 355 post), because in that event the accused will not have been found guilty or dealt with summarily and the whole of the proceedings will be a nullity. The Judge Advocate General has so ruled (see the Manual of Military Law (12th Edn, 1972) p 449). It would seem to follow, by the same reasoning, that a finding of guilty by a court-martial or a standing civilian court, quashed for want of jurisdiction, would not amount to the accused having been 'tried' by that court. Thus, in any of the circumstances suggested, a subsequent trial by a civil court for the same, or substantially the same, offence would not be barred. As to the Judge Advocate General see paras 446-447 post.

As to when a charge should be preferred before a service tribunal or authority and when before a civil court see the Queen's Regulations for the Army 1975 paras J7.001-J7.011; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 14 paras J944-J945.

9 Reserve Forces Act 1996 s 106(1). It is immaterial, for the purposes of any provision of Pt X (ss 95-109) (see para 40 et seq ante) making an offence triable by court-martial, whether the person concerned is otherwise subject to service law: s 106(2). An offence under service law (other than an offence of desertion or absence without leave) committed by a member of a reserve force when not in permanent service or under a call out order, which is triable by court-martial, is also triable by a civil court and punishable with imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both: s 105(1), (3). As to the standard scale see para 40 note 4 ante. Nothing in s 105 affects the liability of a person charged with an offence under that provision to be taken into military, air-force or naval custody: s 105(2).

UPDATE

59 Restrictions on exercise of the jurisdiction

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, Naval Discipline Act 1957, Armed Forces Act 1976 s 6, Sch 3, and Reserve Forces Act 1996 ss 105(2), 106 repealed: Armed Forces Act 2006 Sch 17. As to service proceedings barring subsequent civilian proceedings, see now the Armed Forces Act 2006 ss 64, 65.

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60. Extension of jurisdiction of civil courts in relation to the armed forces.

The territorial jurisdiction of the civil courts¹ in the United Kingdom and any colony² is extended in respect of certain offences under the Army Act 1955³, the Air Force Act 1955⁴, the Naval Discipline Act 1957⁵ and the Reserve Forces Act 1996⁶. The offences concerned, which, although they can be committed by persons who are not members of the armed forces or otherwise subject to the Naval Discipline Act 1957 or to military or air force law⁷, have effect upon the armed forces and their members, are triable by any civil court having jurisdiction in the place where the alleged offender is for the time being, even though the offence was committed outside the court's jurisdiction; but an offence committed in England or Wales or in Scotland or Northern Ireland cannot be tried outside that part of the United Kingdom in which it is alleged to have been committed⁸.

1 For the meaning of 'civil court' see para 57 note 2 ante.

2 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante. As to the meaning of 'colony' see para 20 note 4 ante.

3 I.e. offences under the Army Act 1955 ss 19, 161, 171, 191-197 (all as amended) (see paras 40 et seq ante, 128, 132 post): s 220(2).

4 I.e. offences under the Air Force Act 1955 ss 19, 161, 171, 191-197 (all as amended) (see paras 40 et seq ante, 128, 132 post): s 218(2).

5 I.e. offences under the Naval Discipline Act 1957 ss 96-99 (all as amended) (see para 40 et seq ante): s 100(1).

6 I.e. any offences under the Reserve Forces Act 1996 Pt X (ss 95-109) (see para 40 et seq ante): see s 104(1).

7 See paras 306-308 post.

8 Army Act 1955 s 220(1); Air Force Act 1955 s 218(1); Naval Discipline Act 1957 s 100(1), (2); Reserve Forces Act 1996 s 104(2). The statement in the text summarises the provisions of the Naval Discipline Act 1957 s 100(1), (2). In the other enactments cited, it is provided that the civil court may be 'of any description' and that it has jurisdiction to try any offence to which the provisions are applicable 'which is triable by a court of that description'. Consequently, the precise effect of the provisions will differ, according to whether the offence in question is under the Naval Discipline Act 1957 on the one hand, or under the Army Act 1955, the Air Force Act 1955, or the Reserve Forces Act 1996, on the other; and, in the latter case, according also to whether the offence is triable only summarily or is triable either summarily or on indictment, since a 'civil court' in the Reserve Forces Act 1996 refers only to a court of summary jurisdiction (see s 109; and para 57 note 2 ante).

UPDATE

60 Extension of jurisdiction of civil courts in relation to the armed forces

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (4) CIVIL LAW AND AUTHORITIES IN RELATION TO THE ARMED FORCES/ (iii) Jurisdiction of Civil Courts/61. Enforcement in civil courts of financial penalties awarded under the service discipline Acts.

61. Enforcement in civil courts of financial penalties awarded under the service discipline Acts.

If a financial penalty¹ has been awarded against any person² convicted, or against any person as the parent or guardian of a person convicted³, of a qualifying offence⁴ under the Army Act 1955 or the Air Force Act 1955, and no term of imprisonment in default of payment was imposed⁵, the Defence Council⁶ or an officer authorised by it may make⁷ a financial penalty enforcement order⁸ for the registration of the penalty by the relevant court⁹. On registration of the order, service enforcement procedures¹⁰ cease to be available for the recovery of the sum certified in the order as outstanding, which is treated for all purposes as if it were a fine imposed on a conviction by the relevant court¹¹. There are similar corresponding provisions in the Naval Discipline Act 1957¹².

1 'Financial penalty' means a fine, stoppages or a compensation order (including a fine or compensation order imposed on an offender's parent or guardian: see note 3 infra): Army Act 1955 s 133A(10); Air Force Act 1955 s 133A(10) (Army Act 1955 s 133A and the Air Force Act 1955 s 133A added by the Armed Forces Act 1976 s 16, Sch 8 paras 1, 2). 'Compensation order' means an order imposed on a civilian found guilty of an offence requiring him to pay such sum as appears to the court to be just as, or towards, compensation for any personal injury, loss or damage resulting from the offence or any other offence taken into consideration in determining sentence: Army Act 1955 s 209(3)(a)(iii), Sch 5A para 11(1); Air Force Act 1955 s 209(3)(a)(iii), Sch 5A para 11(1) (the Army Act 1955 s 209(3)(a)(iii) and the Air Force Act 1955 s 209(3)(a)(iii) substituted, and the Army Act 1955 Sch 5A and the Air Force Act 1955 Sch 5A added, by the Armed Forces Act 1976 ss 8, 22, Sch 4 paras 1, 2, Sch 9 para 5; and the Army Act 1955 Sch 5A para 11(1) and the Air Force Act 1955 Sch 5A para 11(1) amended by the Armed Forces Act 1991 ss 9, 26, Sch 3). Where a fine has been awarded together with stoppages or a compensation order, the Army Act 1955 s 133A (as added and amended) and the Air Force Act 1955 s 133A (as added and amended) have effect in relation to the fine and to the stoppages or compensation order as if they were separate penalties: Army Act 1955 s 133A(11); Air Force Act 1955 s 133A(11) (both added by the Armed Forces Act 1986 s 16(1), Sch 1 para 7(4)).

2 See note 7 infra.

3 This applies only where the person convicted is under 17 years of age and is a civilian, and an award may be made only against a service parent or guardian (ie one who is subject to military or air force law, or, as a civilian, to the Army Act 1955 Pt II (ss 24-143) (as amended) or the Air Force Act 1955 Pt II (ss 24-143) (as amended), as the case may be, by virtue of the Army Act 1955 s 209 (as amended) or the Air Force Act 1955 s 209 (as amended), whichever is applicable): Army Act 1955 Sch 5A paras 2(2)(a)-(c), 13, 14(4); Air Force Act 1955, Sch 5A paras 2(2)(a)-(c), 13, 14(4) (the Army Act 1955 Sch 5A and the Air Force Act 1955 Sch 5A as added (see note 1 supra); and the Army Act 1955 Sch 5A para 13 and the Air Force Act 1955 Sch 5A para 13 amended by the Armed Forces Act 1981 s 10, Sch 1 para 3(6); by the Criminal Justice Act 1982 s 58, Sch 8 para 9; and by the Armed Forces Act 1986 ss 5, 16(1), 35(1), Sch 1 paras 11, 85, Sch 6 para 7).

4 'Qualifying offence' means: (1) an offence under the Army Act 1955 s 36 or the Air Force Act 1955 s 36 (disobedience to standing orders), committed outside the United Kingdom, which would constitute a comparable foreign offence (ie an offence under the civil law of any place outside the United Kingdom, which is comparable to an offence under the law of England and Wales) or a local road traffic offence (ie an offence under the civil law of any place outside the United Kingdom relating to road traffic); (2) a civil offence under the Army Act 1955 s 70 (as amended) or the Air Force Act 1955 s 70 (as amended); (3) an offence under any other provision of whichever of the Army Act 1955 or the Air Force Act 1955 is applicable to the offender, which would also constitute an offence under the Army Act 1955 s 70 (as amended) or the Air Force Act 1955 s 70 (as amended): Army Act 1955 s 133A(3); Air Force Act 1955 s 133A(3) (both as added: see note 1 supra). Thus offences of an exclusively service nature are not qualifying offences. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 Ie by a court-martial under the Army Act 1955 s 71B (as added and amended) or the Air Force Act 1955 s 71B (as added and amended): see para 439 post. As to the power to impose imprisonment for default in

payment of fines see para 439 post. A standing civilian court does not have this power, and neither has a commanding officer or an appropriate superior authority dealing with an offender summarily.

6 As to the Defence Council see para 2 ante.

7 Such action may only be taken if: (1) the person against whom the penalty was awarded is one who is, or would be but for the Army Act 1955 s 131 (as amended) or the Air Force Act 1955 s 131 (as amended) (which provide for the trial and punishment under military or air force law of offenders who have ceased to be subject to such law, but only for a limited period: see para 304 post), a person neither subject to service law nor a civilian to whom the Army Act 1955 Pt II (ss 24-143) (as amended) is applied by s 209 (as amended) or to whom the Air Force Act 1955 Pt II (ss 24-143) (as amended) is applied by s 209 (as amended) or to whom the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended) and Pt II (ss 45-92) (as amended) are applied by s 118 (as amended), or is a person who is subject to service law because he is a special member of a reserve force within the meaning of the Reserve Forces Act 1996 (see para 251 post); (2) no appeal is outstanding; and (3) the whole or any part of the penalty remains unpaid or unrecovered: Army Act 1955 s 133A(1)(d)-(f), (2); Air Force Act 1955 s 133A(1)(d)-(f), (2) (both as added (see note 1 supra); and the Army Act 1955 s 133A(2) and the Air Force Act 1955 s 133A(2) amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 5).

8 Such an order must contain a certificate issued on behalf of the Defence Council or by an officer authorised by it stating: (1) that a financial penalty has been awarded against the person named in the order; (2) that he is a person to whom the conditions of the Army Act 1955 s 133A(1)(b)-(f) (as added and amended) or the Air Force Act 1955 s 133A(1)(b)-(f) (as added and amended), as the case may be, are satisfied; (3) the nature and amount of the penalty; (4) the date on which and the offence or offences in respect of which it was awarded; (5) if it was awarded against the person named as parent or guardian of some other person, the fact that it was so awarded and the name of that other person; (6) sufficient particulars of the case (including particulars of any offences taken into consideration at the trial); (7) the date of any payment or recovery of a sum on account of the penalty; (8) the sum outstanding; and (9) the authority to whom any stoppages or compensation included in the penalty will fall, on recovery, to be remitted (ie normally, the appropriate department at the Ministry of Defence for onward transmission to the person to be compensated): Army Act 1955 s 133A(4)(a)-(j); Air Force Act 1955 s 133A(4)(a)-(j) (both as added (see note 1 supra); and the Army Act 1955 s 133A(4)(d) and the Air Force Act 1955 s 133A(4)(d) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 7(3)). As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq. A document purporting to be a financial penalty enforcement order and to be signed on behalf of the Defence Council or by an officer authorised by it is deemed to be such an order unless the contrary is proved, and a certificate under these provisions is deemed to be evidence of the matters stated: Army Act 1955 s 133A(5); Air Force Act 1955 s 133A(5) (both as added: see note 1 supra). Stoppages or compensation recovered must be remitted to the authority at the address specified in the certificate under head (9) supra: Army Act 1955 s 133A(7); Air Force Act 1955 s 133A(7) (both as added: see note 1 supra). Where it appears from a financial penalty enforcement order that the penalty was imposed in respect of more than one offence, it is deemed for the purposes of enforcement to be a single penalty only: Army Act 1955 s 133A(8); Air Force Act 1955 s 133A(8) (both as added: see note 1 supra).

9 Army Act 1955 s 133A(1)(a)-(c); Air Force Act 1955 s 133A(1)(a)-(c) (both as added (see note 1 supra); and the Army Act 1955 s 133A(1)(b) and the Air Force Act 1955 s 133A(1)(b) substituted by the Armed Forces Act 1986 s 16(1), Sch 1 para 7. 'Relevant court' means: (1) the magistrates' court in England and Wales; (2) the sheriff court in Scotland; or (3) the court of summary jurisdiction in Northern Ireland, within whose jurisdiction the person against whom such an order is made appears to the Defence Council or an officer authorised by it to reside or to be likely to reside: Army Act 1955 s 133A(10); Air Force Act 1955 s 133A(10) (both as added: see note 1 supra). In the case of Guernsey, the 'relevant court' is the court of summary jurisdiction and, in the case of Jersey, the 'relevant court' is the Police Court in Jersey: see the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720; and the Army Act 1955 (Jersey) Order 1996, SI 1996/724. As to the application of the Army Act 1955 s 133A (as added and amended) and the Air Force Act 1955 s 133A (as added and amended) to the Isle of Man see the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; and the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723. Corresponding amendments to the definition of 'relevant court' are made to the Naval Discipline Act 1957 s 128F(10) (as added) in its application to Guernsey, Jersey and the Isle of Man: see the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996, SI 1996/726; the Naval Discipline Act 1957 (Isle of Man) Order 1996, SI 1996/727; and the Naval Discipline Act 1957 (Jersey) Order 1996, SI 1996/728.

10 In those procedures available by virtue of the Army Act 1955 s 144 (as amended) (see para 218 post), s 146 (as substituted) (see para 218 post), s 209(4), (4A) (s 209(4) as substituted and s 209(4A) as added) (see para 311 post), and the Air Force Act 1955 s 144 (as amended) (see para 218 post), s 146 (as substituted) (see para 218 post), s 209(4), (4A) (s 209(4) as substituted and s 209(4A) as added) (see para 311 post) and the Naval Discipline Act 1957 s 128A (as added and amended), s 128B (as added) (see para 76 post): Army Act 1955 s 133A(10); Air Force Act 1955 s 133A(10) (both as added: see note 1 supra).

11 Army Act 1955 s 133A(6); Air Force Act 1955 s 133A(6) (both as added: see note 1 supra). Where the person against whom the order is made ceases to be a person to whom the Army Act 1955 s 133A (as added and amended) or the Air Force Act 1955 s 133A (as added and amended) applies (ie if he or she again becomes subject to service law, or, being a civilian, again comes within the scope of the Army Act 1955 s 209 (as amended), the Air Force Act 1955 s 209 (as amended), or the Naval Discipline Act 1957 s 118 (as amended)), at a time when the whole or any part of the certified sum is still outstanding, service enforcement procedures (see note 10 supra) will apply to the amount outstanding as if it were a fine imposed by a civil court: Army Act 1955 s 133A(9); Air Force Act 1955 s 133A(9) (as added: see note 1 supra). As to the registration in magistrates' courts of financial penalty enforcement orders see the Magistrates' Courts Rules 1981, SI 1981/552, r 47 (as amended); and MAGISTRATES vol 29(2) (Reissue) para 855.

12 See the Naval Discipline Act 1957 s 128F (added by the Armed Forces Act 1976 s 16, Sch 8 paras 1, 3; and amended by the Armed Forces Act 1986 s 16(1), (2), Sch 1 para 7, Sch 2; and by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 5). See also note 9 supra.

UPDATE

61 Enforcement in civil courts of financial penalties awarded under the service discipline Acts

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to financial penalty enforcement orders, see now the Armed Forces Act 2006 s 322; and the Armed Forces (Financial Penalty Enforcement Orders) Regulations 2009, SI 2009/1212.

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(iv) Powers of Civil Authorities as to Arrest and Detention

62. Arrest of suspected illegal absentees.

A constable¹ or, if no constable is available, any other person, whether a member of the armed forces or not, may arrest² any person whom he has reasonable cause³ to suspect of being a deserter or absentee without leave⁴ from the armed forces or the reserve forces⁵. This power of arrest may also be exercised in relation to deserters and absentees without leave from any of the forces of any country to which the Visiting Forces Act 1952 applies⁶, but it may only be so exercised in compliance with a request (whether specific or general) from the appropriate authorities of the country to which any such person belongs⁷. The power also extends, in the United Kingdom, to authorise the arrest of a person authorised to be detained in certain circumstances⁸ and who is at large in circumstances which in the case of a member of the United Kingdom forces would amount to illegal absence from those forces⁹.

Any person who, in the United Kingdom or any colony, has the authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that the deserter or absentee, or a person reasonably suspected of being such, is, or is reasonably suspected of being, within his jurisdiction, may issue a warrant authorising the arrest of that person¹⁰.

1 As to the meaning of 'constable' see para 48 note 8 ante.

2 The Naval Discipline Act 1957 s 105(1) and the Reserve Forces Act 1996 s 100, Sch 2 para 2 provide that the constable may carry out the arrest without a warrant. The Army Act 1955 s 186(1) and the Air Force Act 1955 s 186(1) do not contain the words 'without a warrant' (which do, however, appear in the Army Act 1955 s 190B (as added) and the Air Force Act 1955 s 190B (as added), also relating to arrests by constables: see para 65 post). Nevertheless, it is submitted that the power of a constable acting under the Army Act 1955 s 186(1) or the Air Force Act 1955 s 186(1) to effect arrest, being derived from the statutory provisions themselves (which do not require him to have a warrant), is not limited to cases where he has one; if the power were so limited, the anomalous position would arise that a member of the public, who also has the power of arrest, and who cannot hold a warrant authorising him to carry out such an arrest, would have a wider power of arrest than a constable. The point has not, however, been judicially decided.

The power of arrest under the Army Act 1955 s 195(3) and the Air Force Act 1955 s 195(3) (as originally enacted) was removed by the Police and Criminal Evidence Act 1984 s 119, Sch 6 para 49(c) in relation to England and Wales. As to those provisions (as amended) see para 48 ante. The powers of arrest under the Army Act 1955 s 186 (as amended), the Air Force Act 1955 s 186 (as amended), the Naval Discipline Act 1957 s 105 (as amended) and the Visiting Forces Act 1952 s 13 (as amended) were specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2 (as amended). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 927.

3 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 21.

4 As to these offences see para 404 post.

5 Army Act 1955 s 186(1), (2); Air Force Act 1955 s 186(1), (2); Naval Discipline Act 1957 s 105(1), (2); Reserve Forces Act 1996 Sch 2 para 2. Members of the military, air and naval forces attached to a branch of the forces other than their own (eg an airman attached to the naval forces) are also within the scope of these provisions: see the Army Act 1955 s 208, Sch 6 paras 6, 10 (Sch 6 para 10 amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Air Force Act 1955 s 208, Sch 6 paras 6, 10 (Sch 6 para 10 amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Naval Discipline Act 1957 s 113, Sch 2 para 10 (s 113 amended by the Armed Forces Act 1976 ss 4, 22(6), Sch 2 para 3, Sch 10).

These provisions apply to the United Kingdom (including the Channel Islands and the Isle of Man) and any colony: see the Army Act 1955 ss 186(5), 216(2), 217(1); the Air Force Act 1955 ss 186(5), 214(2), 215(1); and the Naval Discipline Act 1957 ss 126(2), 127(1). See also para 20 ante. As to the meaning of 'United Kingdom' generally see para 20 notes 1-2 ante. As to the meaning of 'colony' see para 20 note 4 ante.

6 As to the countries to which the Visiting Forces Act 1952 applies see para 138 post.

7 Ibid s 13(1), (2) (substituted by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 3, Sch 2 para 17(1)). The application of the Visiting Forces Act 1952 s 13(1) (as substituted) is not limited to members of the visiting forces of the specified and designated countries, but renders liable to arrest any person suspected of being a deserter or absentee from any of the forces of a country to which the provision applies, wherever stationed: *R v Thames Justices, ex p Brindle* [1975] 3 All ER 941, [1975] 1 WLR 1400, CA. In the Visiting Forces Act 1952 s 13 (as amended), references to the country to which a person belongs are references to the country from whose forces he is suspected of being, or (where he has surrendered himself) appears from his confession to be, a deserter or absentee: s 13(6). The appropriate authority to make the request for the application of the power of arrest is any authority appointed by the government of the country in question for that purpose: s 17(3). A document purporting to be a certificate under the hand of the Secretary of the Defence Council, stating that such a request has been made and indicating its effect, is sufficient evidence of those matters unless the contrary is proved: s 14(a) (amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 Sch 2 para 17(2); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

8 In pursuance of the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 17, Sch 8. The provisions of Sch 8 paras 1, 2 authorise the detention, in United Kingdom establishments in which persons sentenced to imprisonment or detention by naval, army or air force courts-martial may be detained, of members of a visiting force or military members of a headquarters sentenced by service courts of a visiting force to imprisonment or detention. See further paras 137, 150 post.

9 Ibid Sch 8 para 6(1). See further para 143 post.

10 Army Act 1955 s 186(3); Air Force Act 1955 s 186(3); Naval Discipline Act 1957 s 105(3).

UPDATE

62 Arrest of suspected illegal absentees

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to arrest by civilian police of deserters and absentees without leave see now the Armed Forces Act 2006 s 314, which provides for arrest without a warrant. As to arrest by civilian police of persons unlawfully at large see s 318.

Where a power of arrest is conferred on any person by virtue of Pt 13 Ch 3 (ss 313-320), he may use reasonable force, if necessary, in the exercise of his power: s 320.

NOTE 2--Specific power of arrest without warrant under the Reserve Forces Act 1996 Sch 2 para 2 repealed: Serious Organised Crime and Police Act 2005 Sch 7 para 32, Sch 17, Pt 2. As to powers of arrest without warrant generally, see now the Police and Criminal Evidence Act 1984 ss 24, 24A (s 24 as substituted, s 24A as added).

TEXT AND NOTES 6, 7--Visiting Forces Act 1952 s 13(1), (2) amended: Armed Forces Act 2006 Sch 16 para 18.

NOTE 7--Visiting Forces Act 1952 s 14 further amended: Armed Forces Act 2006 Sch 16 para 19.

NOTE 8--SI 1999/1736 Sch 8 amended: SI 2009/2054.

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63. Procedure following the arrest.

Any person in custody due to the exercise of the statutory powers of arrest in relation to deserters or absentees without leave¹ must be brought before a magistrates' court as soon as practicable². If a person is brought before a magistrates' court in the United Kingdom³ or a court of summary jurisdiction in any colony⁴ and is charged with illegal absence and admits the charge, then if it is satisfied of the truth of the admission and the accused is not in custody for any other cause⁵ the court must order him to be delivered at once into the custody of the appropriate service authority⁶, or, where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into service custody⁷.

If the accused does not admit that he is illegally absent, or if the court is not satisfied of the truth of his admission, it must consider the evidence⁸ and any statement of the accused⁹. If the court is satisfied that he is subject to the Naval Discipline Act 1957 or to military or air force law, as the case may be, and is of opinion that there is sufficient evidence¹⁰ to justify his being tried under the service discipline Act to which he is subject for an offence of desertion, absence without leave or (in the case of a person subject to the Naval Discipline Act 1957) improperly leaving his ship, and the accused is not in custody for some other cause¹¹, it must order him to be delivered into service custody or where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into service custody¹².

In any other case he must be discharged¹³.

1 As to these powers see para 62 ante.

2 Army Act 1955 s 186(4); Air Force Act 1955 s 186(4); Naval Discipline Act 1957 s 105(4); Reserve Forces Act 1996 s 100, Sch 2 para 2(4). A person must also be brought before a magistrates' court if: (1) having previously been brought before such a court and discharged pursuant to the Army Act 1955 s 187(3) (as amended), the Air Force Act 1955 s 187(3) (as amended), or the Naval Discipline Act 1957 s 109(3)(b) (see the text and notes 9-13 infra), he is subsequently arrested as an alleged or suspected deserter or absentee without leave, or under a warrant issued by his commanding officer and addressed to the police pursuant to the Army Act 1955 s 190A (as added), the Air Force Act 1955 s 190A (as added), or the Naval Discipline Act 1957 s 103 (as amended) (see para 65 post); (2) the question whether he is in fact in desertion or absent without leave raises any issue which was investigated by the court which discharged him; and (3) he does not admit his desertion or absence without leave: Army Act 1955 s 186(4A); Air Force Act 1955 s 186(4A); Naval Discipline Act 1957 s 105(4A) (all added by the Armed Forces Act 1971 s 56(1)).

3 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

4 As to the meaning of 'colony' see para 20 note 4 ante.

5 If the accused is in custody for some other cause, the court may order him to be delivered into service custody, or where it is unable to do so, adjourn the proceedings and remand him for such time as appears reasonably necessary for the purpose of arranging for him to be delivered into service custody: Army Act 1955 s 187(2)(b); Air Force Act 1955 s 187(2)(b); Naval Discipline Act 1957 s 109(1)(b); Reserve Forces Act 1996 Sch 2 para 4(1)-(3) (the Army Act 1955 s 187(2)(b), the Air Force Act 1955 s 187(2)(b) and the Reserve Forces Act 1996 Sch 2 para 4(2) amended, and the Naval Discipline Act 1957 s 109(1)(b) substituted, by the Armed Forces Discipline Act 2000 s 9).

6 As to the position of a person shown to be attached to a part of Her Majesty's forces other than that to which he belongs see para 62 note 5 ante. On delivery of the accused into service custody (unless it is that of a

force belonging to a country to which the Visiting Forces Act 1952 s 13 (as amended) applies: see s 13(3), (6) (s 13(3) as substituted); and para 62 ante), a certificate, signed by a justice of the peace, must be handed over with him containing the prescribed particulars of arrest or surrender and of the proceedings before the court: see the Army Act 1955 s 189(1); the Air Force Act 1955 s 189(1); the Naval Discipline Act 1957 s 110(2); and the Reserve Forces Act 1996 Sch 2 para 7(1), (2). As to who may sign such a certificate, in addition to or instead of a justice of the peace, see the Army and Air Force Act 1961 s 30; and the Armed Forces Act 1966 s 33. For any certificate there is payable to the proper officer of the court, by such person as the Defence Council may direct, such fee (if any) as may be prescribed: see the Army Act 1955 s 189(1); the Air Force Act 1955 s 189(1); the Naval Discipline Act 1957 s 110(2); and the Reserve Forces Act 1996 Sch 2 para 7(3) (all amended by the Access to Justice Act 1999 s 90(1), Sch 13 paras 16, 17(1), (2), 19, 20(1), (2), 22, 23(1), (2), 176, 177(1), (2); and the Army Act 1955 s 189(1), the Air Force Act 1955 s 189(1) and the Naval Discipline Act 1957 s 110(2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). 'Proper officer' means in relation to a court of summary jurisdiction in England and Wales, the justices' chief executive for the court, and, in relation to a court of summary jurisdiction elsewhere, the clerk of the court: Army Act 1955 s 189(3A); Air Force Act 1955 s 189(3A); Naval Discipline Act 1957 s 110(2A); Reserve Forces Act 1996 Sch 2 para 7(3A) (all added by the Access to Justice Act 1999 Sch 13 paras 17(1), (3), 20(1), (3), 22, 23(1), (3), 176, 177(1), (3)). 'Prescribed' means prescribed by regulations made by the Secretary of State by statutory instrument: Army Act 1955 s 189(4); Air Force Act 1955 s 189(4); Naval Discipline Act 1957 s 110(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See also the Reserve Forces Act 1996 Sch 2 para 7(4). See the Fees for Certificates of Arrest and Surrender of Deserters and Absentees (Army) Regulations 1956, SI 1956/2019 (amended by SI 2001/1115; and by virtue of the Decimal Currency Act 1969 s 10); the Certificates of Arrest and Surrender (Army) Regulations 1972, SI 1972/318; the Fees for Certificates of Arrest and Surrender of Deserters and Absentees (Air Force) Regulations 1956, SI 1956/2051 (amended by SI 2001/1115; and by virtue of the Decimal Currency Act 1969 s 10); the Certificates of Arrest and Surrender (Air Force) Regulations 1972, SI 1972/286; and the Certificates of Arrest and Surrender (Royal Navy) Regulations 1972, SI 1972/430 (amended by SI 2001/1116). As to the evidential effect of such a certificate see para 378 post. As to the Defence Council and the Secretary of State see para 2 ante.

7 Army Act 1955 s 187(2) (as amended: see note 5 supra); Air Force Act 1955 s 187(2) (as amended: see note 5 supra); Naval Discipline Act 1957 s 109(1)(b) (as substituted: see note 5 supra); Reserve Forces Act 1996 Sch 2 para 4(2) (as amended: see note 5 supra). Any time specified may be extended by the court from time to time if it appears reasonably necessary: Army Act 1955 s 187(2); Air Force Act 1955 s 187(2); Reserve Forces Act 1996 Sch 2 para 4(4).

The provisions of the Magistrates' Courts Act 1980, or any corresponding enactment of a colony, relating to magistrates' courts acting as examining justices, their constitution, procedure and powers of adjournment and remand, and provisions as to evidence and the issue and enforcement of summonses or warrants to secure attendance of witnesses, apply to proceedings in respect of such alleged deserters or absentees: Army Act 1955 s 187(4), (5) (s 187(4) amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 12); Air Force Act 1955 s 187(4), (5) (s 187(4) amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 13); Naval Discipline Act 1957 ss 109(4), 126(3) (s 126(3) amended by the Armed Forces Act 1966 s 37(1), (2), Schs 4, 5); Reserve Forces Act 1996 Sch 2 para 3(2); and see the Interpretation Act 1978 s 17(2).

8 For the purposes of such proceedings, a certificate purporting to be signed by the appropriate officer of the force from which a person is alleged to be illegally absent, and stating that he is a member of that force and illegally absent from it, is evidence of the matters stated: Army Act 1955 s 187(4A) (added by the Armed Forces Act 1971 s 56(2)); Air Force Act 1955 s 187(4A) (added by the Armed Forces Act 1971 s 56(2)); Naval Discipline Act 1957 s 109(4). In relation to an alleged illegal absentee from the forces of a country to which the Visiting Forces Act 1952 s 13 (as amended) applies (see para 62 ante), a document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any of the forces of any such country, stating that a person named and described in it was, at the date of the certificate, a deserter, or an absentee without leave from those forces, is sufficient evidence of the facts appearing from the document to be so certified, unless the contrary is proved: s 14(b). The court must, however, consider all the evidence: *R v Tottenham Magistrates' Court, ex p Williams* [1982] 2 All ER 705, DC.

9 Army Act 1955 s 187(3); Air Force Act 1955 s 187(3); Naval Discipline Act 1957 s 109(3); Reserve Forces Act 1996 Sch 2 para 5(1), (2).

10 Where the accused is alleged to be an illegal absentee from the forces of a country to which the Visiting Forces Act 1952 s 13 (as amended) applies (see para 62 ante), the first question for the court will be whether it is satisfied that a request has been made by the appropriate authorities of the country to whose forces the accused is alleged to belong for the powers conferred by the Army Act 1955 ss 186, 187 (both as amended), as applied by the Visiting Forces Act 1952 s 13(1) (as amended), to be exercised; the second will be whether it is satisfied that the accused is a member of any of the forces of that country; and the third will be whether there is sufficient evidence to justify his being tried under the service law of that country for an offence of desertion or absence without leave. As to the evidence necessary to satisfy these requirements see note 8 supra; and para 62 text and note 7 ante. Where the accused is alleged to be a member of a visiting force or a military member of a headquarters, unlawfully at large when authorised to be detained in United Kingdom custody (see para 62 text and notes 8-9 ante), the court must be satisfied that he is a person authorised to be detained in

pursuance of the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 17, Sch 8 para 6(4) (adapting the provisions of the Army Act 1955 s 187(3)).

11 If the accused is in custody for some other cause, the court has power, but is not required, to order him to be delivered into military or air force custody (if he is subject to military or air force law): Army Act 1955 s 187(3) proviso; Air Force Act 1955 s 187(3) proviso; Reserve Forces Act 1996 Sch 2 para 5(3) proviso. As to the court's similar powers in such a case where the accused is subject to the Naval Discipline Act 1957 see s 109(3) (a).

12 Army Act 1955 s 187(3); Air Force Act 1955 s 187(3); Naval Discipline Act 1957 s 109(3)(a); Reserve Forces Act 1996 Sch 2 para 5(3) (all amended by the Armed Forces Discipline Act 2000 s 9).

13 Army Act 1955 s 187(3); Air Force Act 1955 s 187(3); Naval Discipline Act 1957 s 109(3)(b); Reserve Forces Act 1996 Sch 2 para 5(3).

UPDATE

63 Procedure following the arrest

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. See now the Armed Forces Act 2006 s 316; and the Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009, SI 2009/1108. Where a person who is released under the Armed Forces Act 2006 s 316 fails to comply with the condition subject to which he is released, a warrant for his arrest may be issued: see the Armed Forces Act 2006 s 317. See also the Armed Forces (Warrants of Arrest for Service Offences) Rules 2009, SI 2009/1110. The Secretary of State may by regulations make provision requiring a certificate to be supplied when a person (1) is transferred to custody; or (2) is released under the Armed Forces Act 2006 s 316: see s 319; and SI 2009/1108.

NOTE 6--Visiting Forces Act 1952 s 13(3) further substituted: Armed Forces Act 2006 Sch 16 para 18. Army and Air Force Act 1961 repealed: Armed Forces Act 2006 Sch 17.

NOTE 8--Visiting Forces Act 1952 s 14 further amended: Armed Forces Act 2006 Sch 16 para 19.

NOTE 10--SI 1999/1736 Sch 8 para 6(4) amended: SI 2009/2054.

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64. Procedure on surrender by illegal absentee to police.

Where a person surrenders himself in the United Kingdom¹ or any colony² to a constable³ as being illegally absent from the Royal Navy, regular forces, regular air force or the reserve forces⁴, the constable must bring him to a police station⁵. If, after inquiry, it appears to the officer in charge of a police station to which a person is so brought, or at which a person surrenders himself, that he is in fact illegally absent, that officer may either cause that person to be delivered into service custody without bringing him before a magistrates' court⁶, or may bring him before such a court⁷.

1 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 As to the meaning of 'colony' see para 20 note 4 ante.

3 As to the meaning of 'constable' see para 48 note 8 ante.

4 As to the reserve forces see paras 173 et seq, 223 et seq post.

5 Army Act 1955 s 188(1); Air Force Act 1955 s 188(1); Naval Discipline Act 1957 ss 108(1), 126(1), (2); Reserve Forces Act 1996 s 100, Sch 2 para 6(1)(a). These provisions are applicable to deserters and absentees without leave from any of the forces of any country to which the Visiting Forces Act 1952 s 13 (as amended) applies (see para 62 ante), but only if the appropriate authority of the country to which that force belongs has requested that such powers should be exercised: see s 13(1), (2) (as substituted); and para 62 text and note 7 ante. They are also applicable, in the United Kingdom, to any person alleged to be a member of a visiting force, or a military member of a headquarters, unlawfully at large in the circumstances to which the visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 17, Sch 8 applies: see para 62 note 8 ante.

6 Where a person who has surrendered to the police is delivered into service custody without being brought before a court, then unless the custody into which he is delivered is that of a visiting force (see para 62 note 7 ante), a certificate containing the prescribed particulars relating to that person's surrender, signed by the officer of police causing the delivery, must be handed over with him: Army Act 1955 s 189(2); Air Force Act 1955 s 189(2); Naval Discipline Act 1957 s 110(1); Reserve Forces Act 1996 Sch 2 para 7(1), (2). As to the prescribed particulars see the regulations cited in para 63 note 6 ante. As to the evidential effect of such a certificate see para 378 post.

7 Army Act 1955 s 188(2); Air Force Act 1955 s 188(2); Naval Discipline Act 1957 s 108(2); Reserve Forces Act 1996 Sch 2 para 6(1)(b), (2). The court will then proceed under the Army Act 1955 s 187 (as amended), the Air Force Act 1955 s 187 (as amended), the Naval Discipline Act 1957 s 109 (as amended) or the Reserve Forces Act 1996 Sch 2 paras 3-5 (as amended): see para 63 ante.

UPDATE

64 Procedure on surrender by illegal absentee to police

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to procedure on surrender see now the Armed Forces Act 2006 s 315. Where a person who is released under the Armed Forces Act 2006 s 315 fails to comply with the condition subject to which he is released, a warrant for his arrest may be issued: see the Armed Forces Act 2006 s 317. See also the Armed Forces (Warrants of Arrest for Service Offences) Rules 2009, SI 2009/1110. The Secretary of State may by regulations make provision requiring a certificate to be

supplied when a person (1) is transferred to custody; or (2) is released under the Armed Forces Act 2006 s 315: see s 319; and the Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009, SI 2009/1108.

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65. Arrest under the service discipline Acts.

A warrant addressed to an officer of the police may be issued by an authorised officer¹ for the arrest of any person suspected of committing any offence under Part II of the Army Act 1955², Part II of the Air Force Act 1955³ or Part I⁴ of the Naval Discipline Act 1957⁵, and a person arrested under such a warrant must be delivered into military, air force or naval custody as soon as practicable⁶.

A constable⁷ may arrest without warrant any person who has been sentenced to imprisonment or detention under Part II of the Army Act 1955, Part II of the Air Force Act 1955 or Part II of the Naval Discipline Act 1957⁸, but who is unlawfully at large⁹ during the currency of the sentence, and may take that person to any place in which he is required by law to be detained¹⁰.

1 Ie, for the purposes of the Army Act 1955 s 190A(1) (as added) and the Air Force Act 1955 s 190A(1) (as added), the commanding officer, determined as if the suspected person had been charged with the offence alleged: see the Army Act 1955 s 190A(1); and the Air Force Act 1955 s 190A(1) (the Army Act 1955 s 190A and the Air Force Act 1955 s 190A added by the Armed Forces Act 1971 s 44(2)). In the Naval Discipline Act 1957 s 103 (as amended), the authorised officer is the commander-in-chief, the senior naval officer present at any port, any officer in command of any of Her Majesty's ships or naval establishments or any officer who, by virtue of regulations made under s 52E(2)(a) (as added and amended) (see para 348 post) may exercise the powers of that person's commanding officer: s 103(1) (amended by the Armed Forces Act 1996 s 5, Sch 1 para 92).

2 Ie the Army Act 1955 Pt II (ss 24-143) (as amended). The provisions creating offences comprise ss 24-70 (as amended).

3 Ie the Air Force Act 1955 Pt II (ss 24-143) (as amended). The provisions creating offences comprise ss 24-70 (as amended).

4 Ie the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended).

5 Army Act 1955 s 190A(1) (as added: see note 1 supra); Air Force Act 1955 s 190A(1) (as added: see note 1 supra); Naval Discipline Act 1957 s 103(1) (as amended: see note 1 supra). A warrant must specify the name of the person for whose arrest it is issued and the offences alleged to have been committed, and it may be issued in respect of two or more persons alleged to have committed the same offence, or offences of the same class: Army Act 1955 s 190A(2) (as added: see note 1 supra); Air Force Act 1955 s 190A(2) (as added: see note 1 supra); Naval Discipline Act 1957 s 103(2).

6 Army Act 1955 s 190A(3) (as added: see note 1 supra); Air Force Act 1955 s 190A(3) (as added: see note 1 supra); Naval Discipline Act 1957 s 103(3). A certificate, signed by the officer of police causing the delivery, must be handed over with the person delivered, stating the fact, date, time and place of arrest, and whether or not the person arrested was then wearing military, air force or naval uniform: Army Act 1955 s 190A(3) (as so added); Air Force Act 1955 s 190A(3) (as so added); Naval Discipline Act 1957 s 103(3). The form and contents of the certificate are prescribed by regulations made by the Secretary of State and is evidence of the matters stated in it: Army Act 1955 s 190A(4) (as added: see note 1 supra); Air Force Act 1955 s 190A(4) (as added: see note 1 supra); Naval Discipline Act 1957 s 103(4) (added by the Armed Forces Act 1971 s 44(1), (2)). See the Certificates of Arrest and Surrender (Army) Regulations 1972, SI 1972/318; the Certificates of Arrest and Surrender (Air Force) Regulations 1972, SI 1972/286; and the Certificates of Arrest and Surrender (Royal Navy) Regulations 1972, SI 1972/430 (amended by SI 2001/1116). As to the evidential effect of such certificates see para 378 post. As to the Secretary of State see para 2 ante. As to powers of arrest under the Reserve Forces Act 1996 see s 100, Sch 2 para 2.

7 As to the meaning of 'constable' see para 48 note 8 ante.

8 Ie the Naval Discipline Act 1957 Pt II (ss 45-92) (as amended).

9 As to the meaning of 'unlawfully at large' in relation to persons temporarily released from, or otherwise allowed out of, service or civil custody see the Army Act 1955 s 119(5)-(7), the Air Force Act 1955 s 119(5)-(7) and the Naval Discipline Act 1957 s 88(2), (3) (as amended) (see para 514 post); applied by the Army Act 1955 s 190B(2) (s 190B added by the Armed Forces Act 1971 s 44(2)); the Air Force Act 1955 s 190B(2) (s 190B added by the Armed Forces Act 1971 s 44(2)); and the Naval Discipline Act 1957 s 104(2).

10 Army Act 1955 s 190B(1) (as added: see note 9 supra); Air Force Act 1955 s 190B(1) (as added: see note 9 supra); Naval Discipline Act 1957 s 104(1). The powers of arrest under these enactments were specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 927. The terms of these provisions are wide enough to authorise the arrest of civilians sentenced to imprisonment by court-martial; and they have been expressly made applicable, so far as the Army Act 1955 and the Air Force Act 1955 are concerned, to civilians sentenced by a standing civilian court to imprisonment, or made subject to a reception or custodial order under the Army Act 1955 s 209(3), Sch 5A (as added and amended) or the Air Force Act 1955 s 209(3), Sch 5A (as added and amended) (see para 61 ante), or to an order of detention for a civil offence under the Army Act 1955 s 71A(4) (as added and amended) or the Air Force Act 1955 s 71A(4) (as added and amended) (see para 431 post): see the Standing Civilian Courts Order 1997, SI 1997/172, art 91, Sch 4. As to standing civilian courts see para 520 et seq post.

UPDATE

65 Arrest under the service discipline Acts

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

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66. Arrest of members of visiting forces and international headquarters.

The Visiting Forces Act 1952 makes provision for the exercise in the United Kingdom¹ of powers by the service courts and authorities of any visiting force² over the members of that force and of any civilian component³ of the force⁴, and places restrictions on the trial by the courts of the United Kingdom of persons connected with any such force for certain offences against United Kingdom law allegedly committed by such persons⁵. These provisions are extended, with modifications, to military or civilian members of certain international headquarters⁶.

None of these provisions, however, affects any powers of arrest, search, entry, seizure or custody which can be exercised under United Kingdom law with respect to offences allegedly committed against that law⁷; nor do the provisions affect any obligation of any person in respect of a recognisance or bail bond entered into in consequence of the arrest of himself or any other person, or any power of any court to remand (on bail or in custody) any person brought before it in connection with an offence against the law of the United Kingdom⁸.

1 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 For the meaning of 'visiting force' see para 140 post.

3 For the meaning of 'civilian component' see para 141 post.

4 See para 141 post.

5 See para 144 et seq post.

6 See para 150 post.

7 Visiting Forces Act 1952 s 5(1)(a). Where, however, a person has been taken into custody by a constable without a warrant, and there is reasonable ground for believing that he is subject to the jurisdiction of the service courts of a foreign country under s 2 (as amended) (see para 143 post), he may, notwithstanding anything in the Police and Criminal Evidence Act 1984 Pt IV (ss 34-51) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE) be detained in custody for three days, without being brought before a magistrates' court, in order to decide whether he is to be dealt with by a United Kingdom court or by a service court of that country: Visiting Forces Act 1952 s 5(2) (amended by virtue of the Criminal Justice Act 1988 s 107(1), Sch 15 para 13). If he is not delivered into the custody of the appropriate authority of the foreign country within that period he must as soon as possible be brought before a magistrates' court or released on bail: Visiting Forces Act 1952 s 5(2) (as so amended). For the necessary modification in relation to Northern Ireland see s 5(4) (amended by virtue of the Criminal Justice Act 1988 Sch 15 para 13). For the general procedure in relation to persons arrested see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 910 et seq.

8 Visiting Forces Act 1952 s 5(1)(b), (c).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (4) CIVIL LAW AND AUTHORITIES IN RELATION TO THE ARMED FORCES/(v) Military Aircraft/67. Military aircraft.

(v) Military Aircraft

67. Military aircraft.

The Air Navigation Order 2000¹ does not, with certain exceptions, apply to military aircraft². The exceptions are provisions in the order relating to: (1) flying displays³; (2) flight time requirements⁴; (3) the power to make rules of the air requiring aircraft to give way to military aircraft⁵; and (4) noise and vibration⁶.

The Air Navigation (Investigation of Air Accidents involving Civil and Military Aircraft or Installations) Regulations 1986⁷ provide for investigation into the circumstances and causes of accidents involving military aircraft (including aircraft registered outside the United Kingdom⁸ where the accident has occurred in or over the United Kingdom) arising out of or in the course of air navigation and occurring in or over the United Kingdom, or, if the aircraft belongs to Her Majesty, occurring anywhere, in circumstances in which there is a civil element⁹. The regulations also provide for investigation into the circumstances and causes of accidents involving civil aircraft in which there is a military element¹⁰. Accidents may be the subject of investigation¹¹ by an inspector¹², a review board¹³ or a public inquiry¹⁴. The fundamental purpose of investigating accidents under these regulations is to determine the circumstances and causes of the accident with a view to the preservation of life and the avoidance of accidents in the future; it is not the purpose to apportion blame or liability¹⁵. The procedure under these regulations is very similar to the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹⁶, which applies to all civil aviation accidents and incidents.

1 Ie the Air Navigation Order 2000, SI 2000/1562 (as amended): see AIR LAW vol 2 (2008) PARA 353 et seq.

2 See *ibid* art 126(2), (3); and AIR LAW vol 2 (2008) PARA 359. As to when a military aircraft is flown by a civilian pilot see art 126(4); and AIR LAW vol 2 (2008) PARA 359.

3 Ie *ibid* art 70(4), (9): see AIR LAW vol 2 (2008) PARA 545.

4 Ie *ibid* art 71(2)(a): see AIR LAW vol 2 (2008) PARA 464.

5 Ie *ibid* art 84(1)(a): see AIR LAW vol 2 (2008) PARAS 357, 563.

6 Ie *ibid* art 108: see AIR LAW vol 2 (2008) PARA 259.

7 Ie the Air Navigation (Investigation of Air Accidents involving Civil and Military Aircraft or Installations) Regulations 1986, SI 1986/1953 (as amended): see the text and notes 8-16 *infra*.

8 As to accidents to aircraft registered outside the United Kingdom see *ibid* reg 20. As to the meaning of 'United Kingdom' see para 20 note 1 *ante*.

9 See *ibid* reg 3(1), (3)-(4). See also AIR LAW vol 2 (2008) PARA 604. Investigations may be held, for example, into collisions between military and civil aircraft.

10 See *ibid* reg 3(2), (3)-(4).

11 As to obstruction of an investigation see *ibid* reg 22.

12 See *ibid* regs 5-11, 21.

13 See *ibid* regs 12-16, 21.

14 See *ibid* regs 17-19.

15 See *ibid* reg 4. For provisions as to Northern Ireland see reg 24 (amended by the Police (Northern Ireland) Act 2000 s 78(2)(b)); and for provisions as to Scotland see the Air Navigation (Investigation of Air Accidents involving Civil and Military Aircraft or Installations) Regulations 1986, SI 1986/1953, reg 23.

16 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798 (as amended): see AIR LAW vol 2 (2008) PARA 604 et seq.

UPDATE

67 Military aircraft

TEXT AND NOTES--SI 2000/1562 replaced: Air Navigation Order 2005, SI 2005/1970 (amended by SI 2006/2316, SI 2007/274, SI 2007/3467, SI 2009/1742).

SI 1986/1953 replaced: Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/(i) Protection of Children of Service Families/68. Power to make service family child assessment orders.

(5) PROTECTION OF CHILDREN AND MAINTENANCE

(i) Protection of Children of Service Families

68. Power to make service family child assessment orders.

The power to make an assessment order¹ is exercisable only with respect to a child² who: (1) resides outside the British Islands³ with the family of a person subject to service law⁴ serving in a country or territory outside the British Islands or of a civilian in a corresponding position⁵; or (2) is staying (for however short a time) outside the British Islands with such a family⁶. When a person is authorised by regulations⁷ to make an application with respect to a child, it must be made by notice in writing and must specify the grounds on which it is made⁸. On receipt of an application, the officer having jurisdiction⁹ must fix the date, time and place at which he will consider the application and must notify the person making the application¹⁰. A person making an application for an assessment order with respect to a child must take such steps as are reasonably practicable to ensure that, before the application is considered, notice of the application is given to the child, his parents¹¹, any other person who has parental responsibility¹² for him, any other person caring for the child or with whom the child is residing¹³ immediately before the making of the application, any person in whose favour a contact order¹⁴ is in force with respect to the child and any person who is allowed to have contact with the child¹⁵. Those persons must be given seven days' notice in writing of the date, time and place at which the officer having jurisdiction will consider the application¹⁶. The officer may make an assessment order with respect to the child if, but only if, he is satisfied that: (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm; (b) an assessment of the state of the child's health or development or of the way in which he has been treated is required to enable the applicant to determine whether or not the child is suffering or is likely to suffer significant harm; and (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an assessment order¹⁷. An assessment order may not be made with respect to any child if the officer to whom the application is made is satisfied that there are grounds for making a protection order¹⁸ with respect to the child and that he ought to make such an order rather than an assessment order¹⁹. The provisions above have effect, with modifications, in Guernsey²⁰, the Isle of Man²¹ and Jersey²².

1 Ie under the Armed Forces Act 1991 s 17 (as amended). As to child assessment orders generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 578 et seq.

2 'Child' means a person under the age of 18: *ibid* s 23(1).

3 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

4 'Service law' means military law, air force law or the Naval Discipline Act 1957: Armed Forces Act 1991 ss 23(1), 25.

5 For the meaning of 'civilian in a corresponding position' see para 31 note 3 ante; definition applied by *ibid* s 23(1).

6 *Ibid* s 17(1) (substituted by the Armed Forces Act 2001 s 34, Sch 6 para 57).

7 'Regulations' means regulations made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Armed Forces Act 1991 s 23(1). Regulations may make provision for determining: (1) who, in relation to an assessment order or a protection order (see para 70 post), is at any time the officer having jurisdiction for the purposes of any of the provisions of Pt III (ss 17-23) (as amended); and (2) who, in relation to a protection order, is at any time a superior officer for the purposes of ss 21, 22 (see para 72 post): s 23(2). Any power to make regulations may make different provision for different cases and for different purposes: s 23(4).

8 Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 5(1).

9 The officer having jurisdiction is, in the case of a child falling within the Armed Forces Act 1991 s 17(1) (as substituted) (see the text to note 6 supra), the commanding officer for the time being of the person of whose family the child forms a part and, in the case of a child falling within s 17(2) (as substituted) (see note 13 infra), the commanding officer for the time being of the person with whom the child is staying: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 2(1). 'Commanding officer', in relation to any person, means: (1) where the person concerned is subject to the Army Act 1955 Pt II (ss 24-143) (as amended) or the Air Force Act 1955 Pt II (ss 24-143) (as amended), the officer who is that person's commanding officer for the purposes of the Army Act 1955 s 82 (as amended) or of the Air Force Act 1955 s 82 (as amended) (see para 353 post); and (2) where the person concerned is subject to the Naval Discipline Act 1957 Pt I (ss 1-143) (as amended) and Pt II (ss 45-92) (as amended), the officer who is for the time being in immediate command of the ship or naval establishment to which that person belongs, or, if the person is absent from the ship or establishment on detached service either on shore or elsewhere, the officer who is for the time being in immediate command of that person: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 1(2).

10 Ibid reg 5(2).

11 Any reference to the parents of a child is to be construed without regard to whether they are or have been married to each other at any time; and this is without prejudice to the operation of the Family Law Reform Act 1987 s 1 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 125) and any enactment or rule of law relating to adoption or legitimation: Armed Forces Act 1991 s 23(1), (3).

12 'Parental responsibility' has the meaning given by the Children Act 1989 s 3 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 134): Armed Forces Act 1991 s 23(1).

13 Any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying: ibid s 17(2) (substituted by the Armed Forces Act 2001 Sch 6 para 57).

14 'Contact order' has the meaning given by the Children Act 1989 s 8(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 251): Armed Forces Act 1991 s 23(1). As to the modification of the definition of 'contact order' in relation to the Isle of Man see the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; and the Naval Discipline Act 1957 (Isle of Man) Order 1996, SI 1996/727.

15 Armed Forces Act 1991 s 17(4). A person is allowed to have contact with a child by virtue of an order under the Children Act 1989 s 34 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) paras 278-279. The persons who are authorised to make an application for an assessment order under the Armed Forces Act 1991 s 17(3) are: (1) the Soldiers', Sailors' and Airmen's Families Association and any of its officers; (2) the Naval Personal and Family Service and any of its Chief Petty Officers (Family Service); (3) a registered medical practitioner serving as a member of the medical branch of any of Her Majesty's armed forces; and (4) a civilian registered medical practitioner to whom the Army Act 1995 Pt II (ss 24-143) (as amended) applies by virtue of s 209 (as amended), or the Air Force Act 1955 Pt II (ss 24-143) (as amended) applies by virtue of s 209 (as amended), or the Naval Discipline Act 1957 Pt II (ss 45-92) (as amended) applies by virtue of s 118 (as amended) (see paras 21 ante, 311 post): Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 4(1). 'Registered medical practitioner' means a person registered as a medical practitioner under the Medical Act 1983 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) paras 3-4): Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 4(2).

16 See ibid reg 5(3). The officer having jurisdiction must satisfy himself that the person has complied with reg 5(3) and, where any person has not been notified, the hearing of the application may be adjourned: reg 5(4). Where the officer having jurisdiction adjourns the hearing of an application for an assessment order, he must: (1) fix the date, time and place at which he will resume the hearing of the application; and (2) take such steps as are reasonably practicable to ensure that any person mentioned in the Armed Forces Act 1991 s 17(4) (see the text to note 15 supra) who was not present at the adjourned hearing is notified of the date, time and place fixed in accordance with head (1) supra: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 5(8).

17 Armed Forces Act 1991 s 17(3). Before determining an application, the person making the application and the other persons mentioned in s 17(4) (see the text to note 15 supra) have the opportunity to make representations unless it is impracticable and would cause delay: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 5(5), (6). A record of any oral evidence must be kept: reg 5(9). Notice of any decision made by the officer must be given in writing together with the reasons for the decision: reg 5(9).

18 Is an order made under the Armed Forces Act 1991 s 19 (as amended): see para 70 post.

19 Ibid s 17(5).

20 See the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; and the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996, SI 1996/726.

21 See the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; and the Naval Discipline Act 1957 (Isle of Man) Order 1996, SI 1996/727.

22 See the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720; the Army Act 1955 (Jersey) Order 1996, SI 1996/724; and the Naval Discipline Act 1957 (Jersey) Order 1996, SI 1996/728.

UPDATE

68-73 Protection of Children of Service Families

As to the removal and accommodation of children by service police in an emergency, see the Armed Forces Act 1991 s 22A (added by the Armed Forces Act 2006 Sch 13 para 8).

68 Power to make service family child assessment orders

TEXT AND NOTES--SI 1996/1174 replaced: Armed Forces (Protection of Children of Service Families) Regulations 2009, SI 2009/1107.

TEXT AND NOTES 1-6, 17-19--Armed Forces Act 1991 s 17(1), (3), (5) amended: Armed Forces Act 2006 Sch 13 para 1.

NOTE 4--Definition of 'service law' substituted: Armed Forces Act 2006 Sch 13 para 9.

NOTE 7--Definition of 'regulations' amended: Armed Forces Act 2006 Sch 13 para 9.
Armed Forces Act 1991 s 23(2) repealed: Armed Forces Act 2006 Sch 13 para 9.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/(i) Protection of Children of Service Families/69. Content, effect, variation and discharge of assessment orders.

69. Content, effect, variation and discharge of assessment orders.

An assessment order¹ must specify the date by which the assessment is to begin and have effect for such period, not exceeding seven days beginning with that date, as may be specified in the order². Where an assessment order is in force with respect to a child, it is the duty of any person who is in a position to produce the child: (1) to produce him to such person as may be named in the order; and (2) to comply with such directions³ relating to the assessment of the child as the officer making the order considers appropriate to include in accordance with the terms of the order⁴ except that if the child to whom an assessment order relates is of sufficient understanding to make an informed decision, he may refuse to submit to a medical or psychiatric examination or other assessment⁵. The child to whom an assessment order relates may only be kept away from home: (a) in accordance with directions included in the order; (b) if it is necessary for the purposes of the assessment; and (c) for such period or periods as may be specified in the order⁶. Where a child to whom an assessment order relates is to be kept away from home, the order must contain such directions as the officer making it considers appropriate with regard to the contact that the child must be allowed to have with other persons while away from home⁷. In such circumstances and subject to such conditions as may be prescribed by regulations⁸, an assessment order may be varied or discharged on an application made, in such manner as may be so prescribed, by: (i) the child to whom the order relates; (ii) a parent⁹ of his; (iii) any other person who has parental responsibility¹⁰ for him; (iv) any other person caring for the child or with whom the child was residing immediately before the making of the application; (v) any person in whose favour a child contact order¹¹ is in force with respect to the child; or (vi) any other person who is allowed to have contact with the child by virtue of an order¹². A person subject to service law¹³ or a civilian in a corresponding position¹⁴ who intentionally obstructs any person exercising a power conferred on him by virtue of the making of an assessment order is liable on conviction to a fine or to any less punishment provided by the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as the case may require¹⁵.

1 le under the Armed Forces Act 1991 s 17 (as amended): see para 68 ante.

2 Ibid s 18(1).

3 Any power conferred by ibid s 18 to give directions is exercisable subject to, and in accordance with, any provision made by regulations (see para 68 note 7 ante): s 18(10).

4 Ibid s 18(2), (3).

5 Ibid s 18(4).

6 Ibid s 18(5).

7 Ibid s 18(6).

8 For the meaning of 'regulations' see para 68 note 7 ante.

9 As to references to the parents of a child see para 68 note 11 ante.

10 For the meaning of 'parental responsibility' see para 68 note 12 ante.

11 For the meaning of 'contact order' see para 68 note 14 ante.

12 Armed Forces Act 1991 s 18(7). A person is allowed to have contact with a child by virtue of an order under the Children Act 1989 s 34 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) paras 278-279. As to references to a person with whom a child is residing see para 68 note 13 ante. An application for the variation or discharge of an assessment order must be made in writing and specify the grounds on which it is made: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 6(2). Only an officer having jurisdiction may vary or discharge an assessment order and, before determining an application, he must give those persons referred to in the Armed Forces Act 1991 s 18(7) an opportunity to make representations, unless it is undesirable to do so in the interests of the child, or impracticable, or would cause unnecessary delay: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 6(1), (3), (4). As to the officer having jurisdiction see para 68 note 9 ante.

13 For the meaning of 'service law' see para 68 note 4 ante.

14 For the meaning of 'civilian in a corresponding position' see para 31 note 3 ante; definition applied by the Armed Forces Act 1991 s 23(1).

15 Ibid s 18(8). Any such offence is to be treated: (1) if the offender is subject to military law or a civilian to whom the Army Act 1955 Pt II (ss 24-143) (as amended) is applied by virtue of s 209 (as amended), as if it were an offence against a provision of Pt II (as amended), which is triable by court-martial (see para 302 et seq post); (2) if the offender is subject to air force law or a civilian to whom the Air Force Act 1955 Pt II (ss 24-143) (as amended) is applied by virtue of s 209 (as amended), as if it were an offence against a provision of Pt II (as amended), which is triable by court-martial (see para 302 et seq post); (3) if the offender is subject to the Naval Discipline Act 1957 or a civilian to whom Pt I (ss 1-43B) (as amended) and Pt II (ss 45-92) (as amended) are applied by s 118 (as amended), as if it were an offence against a provision of Pt I (as amended), which is triable by court-martial (see para 302 et seq post): Armed Forces Act 1991 s 18(9).

UPDATE

68-73 Protection of Children of Service Families

As to the removal and accommodation of children by service police in an emergency, see the Armed Forces Act 1991 s 22A (added by the Armed Forces Act 2006 Sch 13 para 8).

69 Content, effect, variation and discharge of assessment orders

TEXT AND NOTES--Armed Forces Act 1991 s 18(2), (6), (8) amended, s 18(8A)-(8C) added, s 18(9) repealed: Armed Forces Act 2006 Sch 13 para 2.

NOTE 12--SI 1996/1174 replaced: Armed Forces (Protection of Children of Service Families) Regulations 2009, SI 2009/1107.

NOTE 14--Definition of 'civilian in a corresponding position' substituted: Armed Forces Act 2006 Sch 13 para 9.

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70. Power to make emergency protection orders.

The power to make a protection order¹ is exercisable only with respect to a child who: (1) resides outside the British Islands² with the family of a person subject to service law³ serving in a country or territory outside the British Islands or of a civilian in a corresponding position⁴; or (2) is staying (for however short a time) outside the British Islands with such a family⁵. On an application made by any person with respect to a child⁶, the officer having jurisdiction⁷ may make a protection order with respect to the child if, but only if, he is satisfied that⁸:

- 4 (a) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant⁹;
- 5 (b) there is reasonable cause to believe that the child is likely to suffer significant harm if he does not remain in the place in which he is then being accommodated (whether or not that is the place where he is resident)¹⁰;
- 6 (c) in the case of an application made by a designated person¹¹: (i) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer significant harm; (ii) the applicant is making inquiries with respect to the child's welfare; and (iii) those inquiries are being frustrated by access to the child being unreasonably refused to the applicant or a person authorised by the applicant to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency¹².

No protection order may be made without affording the child to whom it is proposed that the order should relate, his parents¹³, any other person who has parental responsibility¹⁴ for him, and any other person with whom he was residing¹⁵ immediately before the making of the application for the order, an opportunity to make representations to the officer to whom the application for the order is made, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person who would otherwise have a right to make representations¹⁶.

Any person seeking access to a child in connection with inquiries with respect to the child's welfare¹⁷ and purporting to be a designated person or a person authorised by a designated person to seek such access must, on being asked to do so, produce some duly authenticated document as evidence that he is such a person¹⁸.

Regulations may make provision with respect to the procedure to be followed on and in connection with the making of protection orders¹⁹.

1 le under the Armed Forces Act 1991 s 19 (as amended). As to the application of this provision to Guernsey, the Isle of Man and Jersey see the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996, SI 1996/726; the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; the Naval Discipline Act 1957 (Isle of Man) Order 1996, SI 1996/727; the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720; the Army Act 1955 (Jersey) Order 1996, SI 1996/724; and the Naval Discipline Act 1957 (Jersey) Order 1996, SI 1996/728. As to emergency protection orders generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 583 et seq.

2 For the meaning of 'British Islands' see para 68 note 3 ante.

3 For the meaning of 'service law' see para 68 note 4 ante.

4 For the meaning of 'civilian in a corresponding position' see para 31 note 3 ante; definition applied by the Armed Forces Act 1991 s 23(1).

5 Ibid s 19(1) (substituted by the Armed Forces Act 2001 s 34, Sch 6 para 58). Any reference to a person with whom a child was at any time residing includes a reference to a person with whom a child was staying: Armed Forces Act 1991 s 19(2) (substituted by the Armed Forces Act 2001 Sch 6 para 58).

6 le in accordance with regulations made under the Armed Forces Act 1991 s 23(2): see para 68 note 7 ante.

7 The officer having jurisdiction is, in the case of a child falling within ibid s 19(1) (as substituted) (see the text to notes 1-5 supra), the commanding officer for the time being of the person of whose family the child forms a part, and, in the case of a child falling within s 19(2) (as substituted) (see note 5 supra), the commanding officer for the time being of the person with whom the child is staying: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 2(1). For the meaning of 'commanding officer' see para 68 note 9 ante. Where the person applying for a protection order states in his application that in his opinion it is necessary for the protection order to have effect for a period exceeding eight days from the date of the order, the officer having jurisdiction is: (1) in the case of a child falling within the Armed Forces Act 1991 s 19(1) (as substituted) (see the text to notes 1-5 supra), the officer who is for the time being immediately superior in command to the commanding officer for the time being of the person of whose family the child forms a part; and (2) in the case of a child falling within s 19(2) (as substituted) (see note 5 supra), the officer who is for the time being immediately superior in command to the commanding officer for the time being of the person with whom the child is staying: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 2(2).

8 Armed Forces Act 1991 s 19(3).

9 Ibid s 19(3)(a).

10 Ibid s 19(3)(b).

11 Designated persons for the purposes of ibid s 19 (as amended) are: (1) the Soldiers', Sailors' and Airmen's Families Association and any of its officers; (2) the Naval Personal and Family Service and any of its Chief Petty Officers (Family Service); (3) a registered medical practitioner serving as a member of the medical branch of any of Her Majesty's armed forces; and (4) a civilian registered medical practitioner to whom the Army Act 1995 Pt II (ss 24-143) (as amended) applies by virtue of s 209 (as amended), or the Air Force Act 1955 Pt II (ss 24-143) (as amended) applies by virtue of s 209 (as amended), or the Naval Discipline Act 1957 Pt II (ss 45-92) (as amended) applies by virtue of s 118 (as amended) (see paras 21 ante, 311 post): Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 4(1). 'Registered medical practitioner' means a person registered as a medical practitioner under the Medical Act 1983 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) paras 3-4): Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 4(2).

12 Armed Forces Act 1991 s 19(3)(c).

13 As to references to the parents of a child see para 68 note 11 ante.

14 For the meaning of 'parental responsibility' see para 68 note 12 ante.

15 As to references to a person with whom a child is residing see para 68 note 13 ante.

16 Armed Forces Act 1991 s 19(4). In relation to an application for a protection order, the officer having jurisdiction must ensure that: (1) a written record is kept of the substance of any oral evidence given at any hearing before him; and (2) he gives notice in writing of his decision, and the reasons for it, to the person making the application and the persons mentioned in the Armed Forces Act 1991 s 19(4): Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 7.

17 le under the Armed Forces Act 1991 s 19(3)(c): see head (c) in the text.

18 Ibid s 19(5).

19 Ibid s 19(6)(b). Regulations may also prescribe the descriptions of persons who for the purposes of s 19 (as amended) are designated persons: s 19(6)(a). As to the regulations made see the Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174.

UPDATE

68-73 Protection of Children of Service Families

As to the removal and accommodation of children by service police in an emergency, see the Armed Forces Act 1991 s 22A (added by the Armed Forces Act 2006 Sch 13 para 8).

70 Power to make emergency protection orders

NOTES--SI 1996/1174 replaced: Armed Forces (Protection of Children of Service Families) Regulations 2009, SI 2009/1107.

TEXT AND NOTES 1-16--Armed Forces Act 1991 s 19(1), (3), (4) amended: Armed Forces Act 2006 Sch 13 para 3.

NOTE 4--Definition of 'civilian in a corresponding position' substituted: Armed Forces Act 2006 Sch 13 para 9.

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71. Content and effect of protection orders.

A protection order¹ must name the person on whose application it was made ('the responsible person') and, wherever it is reasonably practicable to do so, the order must name the child to whom it relates; and where it does not name that child it must describe him as clearly as possible². Where a protection order is in force with respect to a child, it is the duty of any person who is in a position to do so to comply with any request to produce the child to the responsible person³. The order may authorise: (1) the removal of the child at any time to accommodation⁴ provided by or on behalf of the responsible person and his being kept there; or (2) the prevention of the child's removal from any service hospital, or other place, in which he was being accommodated immediately before the making of the order⁵. Where a protection order is in force with respect to a child, the responsible person: (a) may only exercise a power to remove the child or prevent his removal⁶ in order to safeguard the welfare of the child; (b) must comply with the requirements of any regulations⁷; and (c) must do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (having regard in particular to the duration of the order)⁸.

The officer making a protection order may give such directions (if any) as he considers appropriate with respect to all or any of the following matters⁹:

- 7 (i) whether the responsible person, in exercising any power under the order, should be accompanied by a person having a medical, nursing or other appropriate qualification¹⁰;
- 8 (ii) any contact which is, or is not, to be allowed between the child and any named person¹¹; and
- 9 (iii) any medical or psychiatric examination or other assessment of the child which is, or is not, to be carried out¹².

Where a protection order is in force with respect to a child and either the responsible person has exercised the power to remove the child¹³ but it appears to him that it is safe for the child to be returned, or the responsible person has exercised the power to prevent the child's removal¹⁴ but it appears to him that it is safe for the child to be allowed to be removed from the place in question, he must return the child or (as the case may be) allow him to be removed¹⁵. Where the responsible person is so required to return the child, he must return him to the care of the person from whose care he was removed or, if that is not reasonably practicable, return him to the care of a parent¹⁶ of his, any person who has parental responsibility¹⁷ for him, or such other person as the responsible person (with the agreement of the officer having jurisdiction) considers appropriate¹⁸. Where the responsible person has been required¹⁹ to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so²⁰. Where a protection order has been made with respect to a child, the responsible person must, subject to any direction given²¹, allow the child reasonable contact with his parents, any other person who has parental responsibility for him, any other person with whom he was residing²² immediately before the making of the application for the order, any person in whose favour a contact order²³ is in force with respect to him, any person who is allowed to have contact with the child by virtue of an order²⁴ and any person acting on behalf of any of those persons²⁵.

A person subject to service law or a civilian in a corresponding position²⁶ who intentionally obstructs any person exercising the power of removal or of prevention of removal of a child is liable on conviction to a fine or to any less punishment provided by the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as the case may require²⁷.

1 Ie under the Armed Forces Act 1991 s 19 (as amended): see para 70 ante.

2 Ibid s 20(1).

3 Ibid s 20(2)(a).

4 'Accommodation' means any service hospital or other suitable place the occupier of which is willing temporarily to receive the child to whom a protection order relates, whether situated in the United Kingdom, the country or territory where the child resides or elsewhere: *ibid* s 23(1). 'Service hospital' means a military, air force or naval unit or establishment or a ship at or in which medical or surgical treatment is provided for persons subject to service law: s 23(1). As to the meaning of 'United Kingdom' see para 20 note 1 ante. For the meaning of 'service law' see para 68 note 4 ante.

5 Ibid s 20(2)(b).

6 Ie under *ibid* s 20(2)(b): see the text to notes 4-5 supra.

7 For the meaning of 'regulations' see para 68 note 7 ante.

8 Armed Forces Act 1991 s 20(3).

9 Ibid s 20(4). Any directions given under s 20(4) must be set out in the protection order, and: (1) the power to give such directions is exercisable subject to, and in accordance with, any provision made by regulations; and (2) any direction given in the exercise of that power may be varied or revoked at any time subject to, and in accordance with, any provision so made: s 20(11). Directions given under s 20(4) may only be varied or discharged by an officer having jurisdiction: Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 8(1). As to the officer having jurisdiction see para 70 note 7 ante. As to the variation and revocation of directions in a protection order see reg 8.

10 Armed Forces Act 1991 s 20(4)(a).

11 Ibid s 20(4)(b).

12 Ibid s 20(4)(c). Where a direction is given in relation to any such examination or other assessment, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or assessment: s 20(4).

13 Ie under *ibid* s 20(2)(b)(i): see head (1) in the text.

14 Ie under *ibid* s 20(2)(b)(ii): see head (2) in the text.

15 Ibid s 20(5).

16 As to references to the parents of a child see para 68 note 11 ante.

17 For the meaning of 'parental responsibility' see para 68 note 12 ante.

18 Armed Forces Act 1991 s 20(6).

19 Ie under *ibid* s 20(5): see the text to notes 13-15 supra.

20 Ibid s 20(7).

21 Ie under *ibid* s 20(4): see the text to notes 9-12 supra.

22 As to references to persons with whom a child is residing see para 70 note 5 ante.

23 For the meaning of 'contact order' see para 68 note 14 ante.

24 Ie by virtue of an order under the Children Act 1989 s 34 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) paras 278-279.

25 Armed Forces Act 1991 s 20(8).

26 For the meaning of 'civilian in a corresponding position' see para 31 note 3 ante; definition applied by *ibid* s 23(1).

27 *Ibid* s 20(9). Any such offence is to be treated: (1) if the offender is subject to military law or a civilian to whom the Army Act 1955 Pt II (ss 24-143) (as amended) is applied by virtue of s 209 (as amended), as if it were an offence against a provision of Pt II (as amended), which is triable by court-martial (see para 302 et seq post); (2) if the offender is subject to air force law or a civilian to whom the Air Force Act 1955 Pt II (ss 24-143) (as amended) is applied by virtue of s 209 (as amended), as if it were an offence against a provision of Pt II (as amended), which is triable by court-martial (see para 302 et seq post); (3) if the offender is subject to the Naval Discipline Act 1957 or a civilian to whom Pt I (ss 1-43B) (as amended) and Pt II (ss 45-92) (as amended) are applied by s 118 (as amended), as if it were an offence against a provision of Pt I (as amended), which is triable by court-martial (see para 302 et seq post): Armed Forces Act 1991 s 20(10).

UPDATE

68-73 Protection of Children of Service Families

As to the removal and accommodation of children by service police in an emergency, see the Armed Forces Act 1991 s 22A (added by the Armed Forces Act 2006 Sch 13 para 8).

71 Content and effect of protection orders

TEXT AND NOTES--Armed Forces Act 1991 s 20(4), (6) amended, s 20(9)-(9C) substituted for s 20(9), (10): Armed Forces Act 2006 Sch 13 para 4. As to the power to include an exclusion requirement in the protection order, see the Armed Forces Act 1991 s 20A (added by the Armed Forces Act 2006 Sch 13 para 5).

NOTE 4--Definition of 'accommodation' amended: Armed Forces Act 2006 Sch 13 para 9.

NOTE 9--SI 1996/1174 replaced: Armed Forces (Protection of Children of Service Families) Regulations 2009, SI 2009/1107.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/(i) Protection of Children of Service Families/72. Duration of protection orders.

72. Duration of protection orders.

A protection order¹ must specify the period for which it is to have effect². Where the order is made by an officer other than a superior officer, the period must not exceed the period of eight days beginning with the date of the order³. Where the order is made by a superior officer, the period must not exceed the period of 28 days beginning with the date of the order⁴. Where a protection order has been made with respect to a child and it appears at any time to the officer having jurisdiction⁵ that the period for which the order is to have effect is less than the maximum period in relation to a protection order made by that officer, and that there is reasonable cause to believe that the child concerned is likely to suffer significant harm if the effect of the order is not extended or further extended, that officer may make an extension order to continue the effect of the protection order until a time no later after the making of the protection order than the end of that maximum period⁶. No extension order may be made without affording the child to whom the protection order relates, his parents⁷, any other person who has parental responsibility for him⁸, and any other person with whom he was residing⁹ immediately before the making of the application for the protection order, an opportunity to make representations to the officer by whom the case is being considered, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person¹⁰. Where a child is removed under a protection order to accommodation¹¹ in the United Kingdom¹², the order may not authorise his being kept in that accommodation after the end of the period of 24 hours beginning with his arrival in that accommodation¹³. An officer making an extension order may exercise the power to make directions¹⁴.

1 As to the making of protection orders see para 70 ante.

2 Armed Forces Act 1991 s 21(1).

3 Ibid s 21(1)(a).

4 Ibid s 21(1)(b).

5 As to the officer having jurisdiction see para 70 note 7 ante.

6 Armed Forces Act 1991 s 21(2).

7 As to references to the parents of a child see para 68 note 11 ante.

8 For the meaning of 'parental responsibility' see para 68 note 12 ante.

9 As to references to persons with whom a child is residing see para 70 note 5 ante.

10 Armed Forces Act 1991 s 21(3).

11 For the meaning of 'accommodation' see para 71 note 4 ante.

12 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

13 Armed Forces Act 1991 s 21(4)(a). However, the powers conferred by the Children Act 1989 (see CHILDREN AND YOUNG PERSONS) are exercisable with respect to the child as if everything which was relevant to the question of whether a protection order should be made were relevant, notwithstanding that the child has been removed under the order, to the question whether the conditions for any of those powers are satisfied: Armed Forces Act

1991 s 21(4)(b). The provisions of s 21(4)(b) do not have effect in Guernsey (see the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; and the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996, SI 1996/726) or Jersey (see the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720; the Army Act 1955 (Jersey) Order 1996, SI 1996/724; and the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996, SI 1996/726) and applies with modifications in relation to the Isle of Man (see the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; and the Naval Discipline Act 1957 (Isle of Man) Order 1996, SI 1996/727).

14 Armed Forces Act 1991 s 21(5). This provision is expressed to be without prejudice to the power to vary or revoke any direction previously given under s 20(4): see para 71 ante.

UPDATE

68-73 Protection of Children of Service Families

As to the removal and accommodation of children by service police in an emergency, see the Armed Forces Act 1991 s 22A (added by the Armed Forces Act 2006 Sch 13 para 8).

72 Duration of protection orders

TEXT AND NOTES--Armed Forces Act 1991 s 21(1)-(3), (5) amended: Armed Forces Act 2006 Sch 13 para 6.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/(i) Protection of Children of Service Families/73. Review and discharge of protection orders.

73. Review and discharge of protection orders.

Where a protection order¹ as originally made has effect for a period exceeding eight days or by an extension order the effect of the protection order is continued for a period exceeding seven days beginning with the date of the extension order, then, if during the period of six days beginning with the date of the protection order or during any other period of six days while the protection order continues to have effect: (1) no extension order is made continuing the effect of the protection order; and (2) no review of the protection order is carried out², then, subject to certain conditions³, on the day immediately following the end of that six day period a superior officer must carry out a review of the protection order⁴. If an application is made by the responsible person, the child to whom the order relates, a parent of his, any other person who has parental responsibility for him, or any other person with whom he was residing immediately before the application for the order, then, in such circumstances and subject to such conditions as may be prescribed by regulations⁵, the officer having jurisdiction⁶ may discharge the order⁷. Regulations may make provision as to the procedure to be followed on a review of a protection order (including provision as to the making of representations by any persons)⁸.

1 As to the making of protection orders see para 70 ante.

2 ie under the Armed Forces Act 1991 s 22(4); see note 4 infra.

3 A review of a protection order need not be carried out on the day following any six day period if: (1) the order ceases to have effect at the end of that six day period or on that following day; or (2) on that following day an extension order is made continuing the effect of the protection order: *ibid* s 22(3).

4 *Ibid* s 22(1), (2). A superior officer carrying out a review of the protection order must consider whether, if the child were returned by the responsible person, or, where s 20(2)(b)(ii) applies (see para 71 head (2) ante), if the child were allowed to be removed from the place in which he was being accommodated immediately before the making of the order, any of the conditions in s 19(3)(a)-(c) (see para 70 heads (a)-(c) ante) would be satisfied; and, if in his opinion none of those conditions would be satisfied, he must discharge the order: s 22(4). When reviewing an order, the officer carrying out the review must afford: (1) the responsible person; (2) the child to whom the protection order relates; (3) his parents; (4) any other person who has parental responsibility for him; and (5) any other person with whom he was residing immediately before the making of the application, an opportunity to make representations unless it is impracticable or would cause delay: see the Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 9(1), (2). As to the responsible person see para 71 ante. As to references to the parents of a child see para 68 note 11 ante. For the meaning of 'parental responsibility' see para 68 note 12 ante. As to references to persons with whom a child is residing see para 70 note 5 ante. Those persons have the right to attend, and be represented at, the review hearing and any decision reached at the review must be communicated in writing to them: reg 9(3), (4). On a review, if any direction is varied or revoked, the original order will be amended accordingly: see reg 9(5).

5 For the meaning of 'regulations' see para 68 note 7 ante.

6 As to the officer having jurisdiction see para 70 note 7 ante.

7 Armed Forces Act 1991 s 22(5). Where a protection order was made by a superior officer or continues to have effect by virtue of an extension order made by a superior officer, that officer is the officer having jurisdiction for the purposes of s 22(5): Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 2(3). If it is not reasonably practicable for the person who is the officer having jurisdiction in accordance with reg 2(3) to act in that capacity, the officer having jurisdiction will be the officer closest in seniority to him from amongst those officers who are superior in command to him and for whom it is reasonably practicable to act in that capacity: reg 2(4). An application to discharge an order must be made by notice in writing, specifying the grounds on which it is made: reg 8(2). Prior to revoking a direction under the Armed Forces Act 1991 s 20(4), (11) (see para 71 ante), representations may be made: see the Armed Forces (Protection of Children of Service Families) Regulations 1996, SI 1996/1174, reg 8(3). See also reg 10.

8 Armed Forces Act 1991 s 22(6). If on carrying out a review of a protection order or on an application under s 22(5) (see the text to notes 5-7 supra), the officer dealing with the matter does not discharge the order, he may exercise the power to give directions under s 20(4) (see para 71 ante): s 22(7).

UPDATE

68-73 Protection of Children of Service Families

As to the removal and accommodation of children by service police in an emergency, see the Armed Forces Act 1991 s 22A (added by the Armed Forces Act 2006 Sch 13 para 8).

73 Review and discharge of protection orders

TEXT AND NOTES--Armed Forces Act 1991 s 22(2), (4), (5), (7) amended, s 22(5A) added: Armed Forces Act 2006 Sch 13 para 7.

NOTES 4, 7--SI 1996/1174 replaced: Armed Forces (Protection of Children of Service Families) Regulations 2009, SI 2009/1107.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/ (ii) Maintenance and other Proceedings/74. Enforcement of maintenance orders by deduction from army or air force pay.

(ii) Maintenance and other Proceedings

74. Enforcement of maintenance orders by deduction from army or air force pay.

A member of the regular forces or regular air force¹ or, in prescribed circumstances, a member of the army reserve, the air force reserve, the Territorial Army or the Auxiliary Air Force², is liable to suffer deductions from pay³ of such sums as the Defence Council⁴, or an officer authorised by it, may think fit to order⁵, in respect of any order made against him for the maintenance of his wife⁶ or child⁷ by any court in the United Kingdom⁸, together with any costs incurred in obtaining the order or in proceedings on appeal against it, or for its variation, revocation or revival⁹. Such an order made by any court in Her Majesty's dominions¹⁰ outside the United Kingdom is enforceable in like manner provided that the Defence Council or authorised officer is satisfied that the defendant has had a reasonable opportunity of appearing in person or has appeared by a duly authorised legal representative to defend the proceedings¹¹.

Similar provisions apply in the case of any judgment or order enforceable by a court in the United Kingdom, requiring the payment of any sum by a member of the regular forces or the regular air force¹².

Where any officer, warrant officer, non-commissioned officer, soldier of the regular forces or airman of the regular air forces (the 'liable person') is required to make periodical payments in respect of any child in accordance with a maintenance assessment made under the Child Support Act 1991¹³, the Defence Council or an authorised officer may order such sum to be deducted from the pay of the liable person and appropriated in or towards satisfaction of any obligation of his to make periodical payments in accordance with the maintenance assessment as it, or the authorised officer, thinks fit¹⁴. Where the Secretary of State¹⁵ makes or cancels a maintenance assessment, and has reason to believe that the person against whom the assessment is, or was, made is an officer, warrant officer, non-commissioned officer, soldier of the regular forces or airman of the regular air force, the Secretary of State must inform the Defence Council or an authorised officer of the terms of the assessment or the cancellation¹⁶. These provisions apply whether or not the liable person was a member of the regular forces or regular air force when the maintenance assessment was made¹⁷.

1 For the meaning of 'regular forces' see para 191 post. For the meaning of 'regular air force' see para 206 post. The provisions as to maintenance described in this paragraph and in para 75 post do not apply to the Royal Marines, the Royal Marines Reserve, or to marine officers, marine warrant officers or non-commissioned officers and marines of the Royal Fleet Reserve: Army Act 1955 s 210(4), Sch 7, Part II para 19 (s 210(4) amended by the Armed Forces Act 1971 s 75, Sch 3 para 4(1); the Armed Forces Act 1981 s 28(1), Sch 4 para 1; and the Reserve Forces Act 1996 s 131(1), Sch 10 para 6; and the Army Act 1955 Sch 7 para 19 amended by the Armed Forces Act 1976 s 3(1), Sch 1 para 2; and by the Armed Forces Act 1981 s 28(1), Sch 4 para 1(2)). The provisions of the Army Act 1955 s 151A (as added) as to the enforcement of court judgments and orders (see the text and note 12 infra) do, however, apply to those forces, as do those of s 152 (as amended) as to the amounts of deductions from pay which may be ordered (see note 5 infra), in so far as these relate to deductions for the purposes of s 151A (as added). Those of s 153 (as amended) as to the service of process in maintenance proceedings also apply (see para 77 post). The provisions of s 150 (as amended), s 151 (as amended), s 151A (as added), s 152 (as amended), and the corresponding provisions of the Air Force Act 1955, do not apply to members of the naval forces attached to the regular forces or to the regular air forces or to any of the Army Reserve, the Air Force Reserve or the auxiliary forces; nor do they apply to any members of the regular forces or regular air force attached to the other service's regular, reserve or auxiliary forces: Army Act 1955 s 208, Sch

6 para 9; Air Force Act 1955 s 208, Sch 6 para 9. For the provisions applicable to the naval and marine forces see para 76 post; and as to the reserve forces see note 2 infra.

2 The provisions of the Army Act 1955 ss 150-153 (as amended) and the Air Force Act 1955 ss 150-153 (as amended) apply to officers, warrant officers, non-commissioned officers and men of the army reserve, air force reserve, Territorial Army and Royal Auxiliary Air Force only when they are in permanent service, in full-time service, called out for home defence service or serving on the permanent staff of the army reserve, the air force reserve, the Territorial Army or the Royal Auxiliary Air Force: Army Act 1955 s 211(4), (4A) (s 211(4) substituted, and s 211(4A) added, by the Reserve Forces Act 1996 s 131(1), Sch 10 para 7(4)); Air Force Act 1955 s 210(4), (4A) (s 211(4) substituted, and s 211(4A) added, by the Reserve Forces Act 1996 Sch 10 para 11(4)). See also paras 247, 310 post.

3 The deductions may be ordered to be made, not only from the person's current pay, but from any balance which may be due to him, whether or not that balance represents pay: Army Act 1955 s 144(7); Air Force Act 1955 s 144(7).

4 As to the Defence Council see para 2 ante.

5 The Defence Council or authorised officer may vary or revoke any order made for a deduction of pay, and may treat it as being in suspense at any time when the person in respect of whom it is made is illegally absent: Army Act 1955 s 150(4); Air Force Act 1955 s 150(4).

The deductions from pay made under the provisions as to the enforcement of maintenance orders made by courts, or under the provisions as to the making of orders by the Defence Council for the maintenance of wives and children (see para 75 post) or those as to the enforcement of judgments and orders for the payment of money (see the text and note 9 infra), must not together exceed such proportion of a person's pay as the Defence Council may determine: Army Act 1955 s 152(1); Air Force Act 1955 s 152(1) (both substituted by the Armed Forces Act 1971 s 59(2); and amended by the Child Support Act 1991 (Consequential Amendments) Order 1993, SI 1993/785, art 2(3)). Orders of the Defence Council, not being statutory instruments, are not recorded in this work. Such deductions take priority over any forfeiture of pay which a person may incur in consequence of the finding or sentence of a court-martial, appropriate superior authority or commanding officer, and this applies whether the forfeiture is incurred before or after the deductions have been ordered: Army Act 1955 s 152(2); Air Force Act 1955 s 152(2) (both amended by the Armed Forces Act 1971 ss 59(2), 77(1), Sch 4; and the Child Support Act 1991 (Consequential Amendments) Order 1993, SI 1993/785, art 2(3)). As to forfeiture of army or air force pay see para 218 post. Orders for deductions from pay made under repealed enactments continue to have effect as if made under the provisions mentioned supra, and the limits on the aggregate amounts apply accordingly: see the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 para 12.

6 In relation to women members of the military and air forces, references to a wife are to be construed as references to a husband: Army Act 1955 s 213(c); Air Force Act 1955 s 211(c). In relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a wife include references to a person who would have been the wife of the defendant if the marriage had subsisted: Army Act 1955 s 150(5); Air Force Act 1955 s 150(5) (both amended by the Armed Forces Act 1991 ss 14(1), (4)(a), 26, Sch 3).

7 If a child of his or his wife or any other child who has been treated by them both as a child of their family: Army Act 1955 s 150(1)(aa); Air Force Act 1955 s 150(1)(aa) (both added by the Armed Forces Act 1991 s 14(1), (2)). Without prejudice to any enactment or rule of law relating to adoption or legitimation, any reference to a child of the defendant or his wife is to be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time: Army Act 1955 s 150(1A); Air Force Act 1955 s 150(1A) (both added by the Armed Forces Act 1991 s 14(1), (3)).

8 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante. Orders registered in or confirmed by a United Kingdom court under the provisions of the Maintenance Orders (Facilities for Enforcement) Act 1920 (see CONFLICT OF LAWS vol 8(3) (Reissue) paras 301-309), or registered in such a court under the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt I (ss 1-24) (as amended) (see CONFLICT OF LAWS vol 8(3) (Reissue) paras 310-322), the Civil Jurisdiction and Judgments Act 1982 Pt I (ss 1-15) (as amended) (see CONFLICT OF LAWS) or EC Council Regulation 44/2001 (OJ L12, 16.1.2001, pp 1-23) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (see CONFLICT OF LAWS), are treated for the purposes of the Army Act 1955 s 150 (as amended) and the Air Force Act 1955 s 150 (as amended) as orders made by a court in the United Kingdom: Army Act 1955 s 150(5); Air Force Act 1955 s 150(5) (both amended by the Maintenance Orders (Reciprocal Enforcement) Act 1972 s 22(1), Schedule para 2; the Civil Jurisdiction and Judgments Act 1982 s 15(4), Sch 12 para 1; and the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, art 5, Sch 3 para 2). As to the modification of the Army Act 1955 s 150(5) and the Air Force Act 1955 s 150(5) in relation to Guernsey, Jersey and the Isle of Man see the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; the Army Act 1955 (Jersey) Order 1996, SI 1996/724; the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; the Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; and the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720.

9 Army Act 1955 s 150(1); Air Force Act 1955 s 150(1) (both amended by the Army and Air Force Act 1961 s 29(2); the Armed Forces Act 1991 ss 14, 26(2), Sch 3; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). It is immaterial whether the defendant was a member of such force when the order was made: see the Army Act 1955 s 150(1); and the Air Force Act 1955 s 150(1). Where the court making the order knows that the defendant is a member of such force it must send a copy of the order to the Defence Council or authorised officer: Army Act 1955 s 150(2); Air Force Act 1955 s 150(2) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Execution cannot be levied on property such as arms, ammunition or clothing used by the debtor for service purposes in order to satisfy an order: Army Act 1955 s 185; Air Force Act 1955 s 185. See para 39 note 1 ante. The exemption may be extended by Order in Council to members of visiting forces and international headquarters: see the Visiting Forces Act 1952 s 8(3).

10 As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707.

11 Army Act 1955 s 150(3); Air Force Act 1955 s 150(3) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). This provision does not, however, apply to an order by which a man is ordered to pay a sum in respect of the maintenance of an illegitimate child adjudged to be his, or to any order varying or revoking any such order, or for costs relating to the proceedings in connection with any such order: Army Act 1955 s 150(3) proviso; Air Force Act 1955 s 150(3) proviso (both amended by the Army and Air Force Act 1961 s 29(2)).

12 See the Army Act 1955 s 151A; and the Air Force Act 1955 s 151A (both added by the Armed Forces Act 1971 s 59(1)). As to the limits of deductions from pay see note 5 supra. This power of making deductions from pay to satisfy judgments or orders for the payment of sums of money does not, however, apply: (1) to any such sum as is mentioned in the Army Act 1955 s 146 (as substituted) or the Air Force Act 1955 s 146 (as substituted) (see para 218 post); or (2) to any sum in respect of which deductions from pay can be made under the Army Act 1955 s 150 (as amended) or the Air Force Act 1955 s 150 (as amended); or (3) to any sum ordered by the Courts-Martial Appeal Court to be paid by an unsuccessful appellant or applicant in respect of costs, which can be recovered by deductions from his pay pursuant to the Courts-Martial (Appeals) Act 1968 s 32(2)(b) (see para 554 post): Army Act 1955 s 151A(1) proviso; Air Force Act 1955 s 151A(1) proviso (both as so added).

13 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 553 et seq. As to the enforcement of maintenance assessments made under the Child Support (Northern Ireland) Order 1991 see the Army Act 1955 s 150AA; and the Air Force Act 1955 s 150AA (both added by the Child Support (Northern Ireland) Order 1991 (Consequential Amendments) Order (Northern Ireland) 1993, SR 1993/157, art 2).

14 Army Act 1955 s 150A(1), (2); Air Force Act 1955 s 150A(1), (2) (both added by the Child Support Act 1991 (Consequential Amendments) Order 1993, SI 1993/785, arts 2(1), 3(1)). Interest with respect to arrears may also be deducted. As from a day to be appointed, these provisions are amended by the Child Support, Pensions and Social Security Act 2000 s 26, Sch 3 paras 1, 2. At the date at which this volume states the law, no such day had been appointed.

15 As to the Secretary of State see para 2 ante.

16 Army Act 1955 s 150A(3); Air Force Act 1955 s 150A(3) (both as added and prospectively amended: see note 14 supra).

17 Army Act 1955 s 150A(4); Air Force Act 1955 s 150A(4) (both as added and prospectively amended: see note 14 supra).

UPDATE

74 Enforcement of maintenance orders by deduction from army or air force pay

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to forfeitures and deductions see now the Armed Forces Act 2006 ss 341, 342; and the Armed Forces (Forfeitures and Deductions) Regulations 2009, SI 2009/1109.

NOTE 5--Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 repealed: Armed Forces Act 2006 Sch 17.

NOTE 9--As to exemption of property used for service purposes from execution, see the Armed Forces Act 2006 s 350.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/ (ii) Maintenance and other Proceedings/75. Deductions by order of Defence Council.

75. Deductions by order of Defence Council.

If the Defence Council¹, or an officer authorised by it, is satisfied that a member of the regular forces, the regular air force² or a member of the reserve or auxiliary forces in the prescribed circumstances³ is without reasonable cause neglecting to maintain his wife⁴ or any child of his⁵ under the age of 17, or that any such child of his is in care⁶, the Defence Council or officer may order such a sum as it or he thinks fit to be deducted from the pay⁷ of that member and to be appropriated towards the maintenance of his wife or child⁸. Such an order may be made for the maintenance of a child after the child has attained the age of 17 if: (1) an order by the Defence Council in favour of the child is in force under an order of a court in the United Kingdom⁹ or in Her Majesty's dominions¹⁰ outside the United Kingdom¹¹, but only if the person from whose pay deductions are ordered is in a place where process cannot be served upon him in proceedings for the variation of the existing court order in consequence of which the existing order of the Defence Council was made¹²; or (2) an order of a court in the United Kingdom was in force in favour of the child at the time when the child attained that age, the person from whose pay the deductions are ordered is in a place where process cannot be served on him in connection with proceedings for variation of the court order, and the child is for the time being engaged in a course of education or training¹³. The Defence Council or authorised officer may continue such an order¹⁴ from time to time after the child has attained the age of 17, if the child is for the time being engaged in a course of education or training¹⁵. However, no order so made or continued may remain in force after the child attains the age of 21 or may, unless so continued, remain in force for more than two years¹⁶.

1 As to the Defence Council see para 2 ante.

2 For the meaning of 'regular forces' see para 191 post. For the meaning of 'regular air force' see para 206 post. See also para 74 note 1 ante.

3 See para 74 note 2 ante.

4 As to references to a wife see para 74 note 6 ante.

5 Without prejudice to any enactment or rule of law relating to adoption or legitimation, references to a child of any person are to be construed without regard to whether the father and mother of the child have or had been married to each other at any time: Army Act 1955 s 151(6); Air Force Act 1955 s 151(6) (both added by the Armed Forces Act 1991 s 14(1), (5)). However, in a case where no court order has been made adjudging the member of the forces in question to be the father of the child, and he does not admit paternity, the Defence Council has no machinery for determining whether the child is in fact his child, and as the making of orders under these provisions is discretionary, it would probably decline, in such a case, to make an order.

6 For these purposes, a child is in care at any time when by virtue of any enactment he is being looked after by a local authority in England and Wales (within the meaning of the Children Act 1989: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 867 et seq) or the equivalent authorities in Scotland or Northern Ireland: Army Act 1955 s 151(1A); Air Force Act 1955 s 151(1A) (both added by the Air Forces Act 1976 s 18; and amended by the Children Act 1989 s 108(4), Sch 12 paras 7, 9). As to the modification of the Army Act 1955 s 151(1A) (as added and amended) and the Air Force Act 1955 s 151(1A) (as added and amended) in relation to Guernsey, Jersey and the Isle of Man see the Army Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/722; the Army Act 1955 (Isle of Man) Order 1996, SI 1996/723; the Army Act 1955 (Jersey) Order 1996, SI 1996/724; the Air Force Act 1955 (Bailiwick of Guernsey) Order 1996, SI 1996/718; Air Force Act 1955 (Isle of Man) Order 1996, SI 1996/719; and the Air Force Act 1955 (Jersey) Order 1996, SI 1996/720.

7 As to the limits on the deductions which may be made see para 74 note 5 ante. As to the funds from which the deduction can be made see para 74 note 3 ante.

8 Army Act 1955 s 151(1); Air Force Act 1955 s 151(1) (both amended by the Air Force Act 1976 s 18; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). If, on any application for the making of an order under these provisions, the Defence Council or officer is satisfied that a prima facie case has been made out, it or he may make an interim order pending further examination: Army Act 1955 s 151(2); Air Force Act 1955 s 151(2) (both amended by the Armed Forces Act 1981 s 11, Sch 2 para 8; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Where an order for deductions from pay is in force under the Army Act 1955 s 150(1), (3) (as amended) or the Air Force Act 1955 s 150(1), (3) (as amended) (ie for enforcing a maintenance order made by a court: see para 74 ante), no further deductions may be ordered under the Army Act 1955 s 151(1), (2) (as amended) or the Air Force Act 1955 s 151(1), (2) (as amended), unless the person against whom that court order was made is in a place where process in proceedings for its variation cannot be served on him: Army Act 1955 s 151(3); Air Force Act 1955 s 151(3). Where an order is in force under the Army Act 1955 s 150A (as added and amended) or the Air Force Act 1955 s 150A (as added and amended) (see para 74 ante) for deductions to be made from the pay of any member of the regular air force with respect to the maintenance of a child of his, no order may be made under the Army Act 1955 s 151 (as amended) or the Air Force Act 1955 s 151 (as amended) for the deduction of any sums from the pay of that person with respect to the maintenance of that child: Army Act 1955 s 151(3A); Air Force Act 1955 s 151(3A) (both added by the Child Support Act 1991 (Consequential Amendments) Order 1993, SI 1993/785, arts 2(2), 3(2)).

The Defence Council or authorised officer may vary or revoke any order made, and may treat any such order as being in suspense at any time when the person in respect of whom it is made is illegally absent: Army Act 1955 s 151(4); Air Force Act 1955 s 151(4) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

9 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

10 As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707.

11 Ie pursuant to the Army Act 1955 s 150(1), (3) (as amended) or the Air Force Act 1955 s 150(1), (3) (as amended): see para 74 ante.

12 Army Act 1955 s 151(5)(a); Air Force Act 1955 s 151(5)(a) (both amended by the Armed Forces Act 1976 s 18(1)).

13 Army Act 1955 s 151(5)(b); Air Force Act 1955 s 151(5)(b).

14 Ie an order made under the Army Act 1955 s 151(1), (2) (as amended) or the Air Force Act 1955 s 151(1), (2) (as amended): see the text and note 8 supra.

15 Army Act 1955 s 151(5)(c); Air Force Act 1955 s 151(5)(c) (both amended by the Armed Forces Act 1976 s 18(1)).

16 Army Act 1955 s 151(5); Air Force Act 1955 s 151(5).

UPDATE

75 Deductions by order of Defence Council

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to forfeitures and deductions see now the Armed Forces Act 2006 ss 341, 342.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(5) PROTECTION OF CHILDREN AND MAINTENANCE/ (ii) Maintenance and other Proceedings/76. Deductions from naval pay by court order.

76. Deductions from naval pay by court order.

Deductions may be made by the prescribed authority¹ from the pay of a member of Her Majesty's naval or marine forces² to provide for the maintenance of his wife³ and children⁴, and for the payment of any costs or expenses incurred in obtaining an order or decree of any court in Her Majesty's dominions⁵ in respect of such maintenance⁶. The conditions attached to such deductions are prescribed by Order in Council⁷. No deduction may be made in liquidation of a sum adjudged to be paid by an order or decree of any court pursuant to the provisions described above unless the prescribed authority is satisfied that the person against whom it was made has had a reasonable opportunity of appearing himself, or has appeared by a duly authorised legal representative to defend the case before the court by which the order or decree was made⁸.

Where, by any judgment or order enforceable by a court in the United Kingdom, any sum is required to be paid by a person subject to the Naval Discipline Act 1957⁹, such amount or amounts may be deducted from that person's pay, in or towards satisfaction of that sum, as the Defence Council¹⁰ or any officer authorised by it may order¹¹.

Where a person, sentenced or ordered by a civil court¹² anywhere in the world to pay a sum in consequence of his being charged before that court with an offence, is at the time of the sentence or order, or subsequently becomes, a person subject to the Naval Discipline Act 1957, then, if the whole or any part of that sum is met by a payment made by or on behalf of any naval authority, the amount of the payment may be deducted from his pay¹³.

1 le the authority prescribed by Order in Council under the Naval and Marine Pay and Pensions Act 1865 s 3: Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(1), (2) (amended by the Armed Forces Act 1991 s 15). The Orders in Council made under these provisions are not statutory instruments (see the Statutory Instruments Regulations 1947, SI 1948/1, reg 2(3), Schedule (substituted by SI 1982/1728)), and are not recorded in this work.

2 As to the constitution of those forces see paras 6-7 ante. This includes the reserve naval and marine forces: see the Reserve Forces Act 1996 s 1(2)(a); and para 173 et seq post.

3 In relation to women members of Her Majesty's naval forces, within the meaning of the Naval Discipline Act 1957, references to a wife are to be construed as references to a husband: Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(2B) (added by the Armed Forces Act 1991 s 15). If, in proceedings in connection with the dissolution or annulment of a marriage, an order has been made for the payment of any periodical or other sum in respect of the maintenance of the person who, if the marriage had subsisted, would have been the wife of any member of Her Majesty's naval or marine forces, references to that person's wife include references to the person in whose favour the order was made: Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(2A)(a) (s 1(2A) added by the Armed Forces Act 1991 s 15).

4 le any child of that person or his wife or any other child who has been treated by them both as a child of the family: see the Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(1)(aa) (added by the Armed Forces Act 1991 s 15). Without prejudice to any enactment or rule of law relating to adoption or legitimation, references to a child of a person or his wife are to be construed without regard to whether or not the father and mother of the child have or had been married to each other at any time: Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(2A)(c) (as added: see note 3 supra).

5 As to Her Majesty's dominions see para 20 note 5 ante; and COMMONWEALTH vol 13 (2009) PARA 707. Any reference to an order or decree of any court in Her Majesty's dominions includes a reference to an order registered in a court in the United Kingdom under the Maintenance Orders (Reciprocal Enforcement) Act 1972 Pt I (ss 1-24) (as amended) or under EC Council Regulation 44/2001 (OJ L12, 16.1.2001, pp 1-23) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or registered under the Civil

Jurisdiction and Judgments Act 1982 Pt I (ss 1-15) in a court in any territory to which that Act for the time being extends: Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(2A)(b) (as added: see note 3 supra). See further CONFLICT OF LAWS. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

6 Naval and Marine Pay and Pensions Act 1865 s 3; Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(1) (amended by the Armed Forces Act 1971 ss 61(2), 77(1), Sch 4 Pt II; and the Armed Forces Act 1991 s 15). For the limitation on the amount which may be deducted see note 13 infra.

7 Such orders are not statutory instruments and are not recorded in this work.

8 Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(2). A certificate signed by the commanding officer of the person liable, stating that he was prevented by service requirements from attending at the hearing is evidence of that fact unless the contrary is proved: s 1(2).

9 For the persons so subject see para 306 post.

10 As to the Defence Council see para 2 ante.

11 Naval Discipline Act 1957 s 128E(1) (s 128E added by the Armed Forces Act 1971 s 61(1)). Any order made pursuant to this provision may be varied or revoked by the authority which made it: Naval Discipline Act 1957 s 128E(2) (as so added). The Defence Council may determine the limits of the total sums deductible from pay under this provision and under the Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1 (as amended) (see the text and note 6 supra): Naval Discipline Act 1957 s 128E(3) (as so added). The power to make deductions under this provision does not include deductions in respect of: (1) maintenance orders (as to which see the text and notes 1-8 supra); (2) sentences or orders in consequence of criminal proceedings (as to which see the text and note 13 infra); or (3) orders for contribution towards the cost of legal aid in connection with applications or appeals to, or appeals from, the Courts-Martial Appeal Court (see para 553 post): s 128E(1) proviso (as so added). As to the corresponding provisions in the Army Act 1955 s 151A (as added) and the Air Force Act 1955 s 151A (as added), which apply equally to the Naval Discipline Act 1957 s 128E (as added) see para 74 text and note 12 ante. Legal aid has been replaced by the Community Legal Service and the Criminal Defence Service: see LEGAL AID.

12 For the meaning of 'civil court' see para 57 note 2 ante.

13 Naval Discipline Act 1957 s 128B (added by the Armed Forces Act 1971 s 61(1)).

UPDATE

76 Deductions from naval pay by court order

TEXT AND NOTES--Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to forfeitures and deductions, see now the Armed Forces Act 2006 ss 341, 342; and the Armed Forces (Forfeitures and Deductions) Regulations 2009, SI 2009/1109. Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 repealed: Armed Forces Act 2006 Sch 17. As to exemption of property used for service purposes from execution, see s 350.

NOTE 6--Naval and Marine Pay and Pensions Act 1865 s 3 amended: Armed Forces (Pensions and Compensation) Act 2004 s 4; Armed Forces Act 2006 Sch 16 para 2.

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77. Service of process in connection with maintenance orders.

Any process to be served on any member of the regular forces, regular air force¹, or, in the prescribed circumstances, members of the Army Reserve, the Air Force Reserve or the auxiliary forces², in respect of proceedings in connection with a maintenance order³ of a court in the United Kingdom⁴, or for the variation, revocation or revival of such an order, is deemed to be served on the defendant if served on his commanding officer, and may be served by registered post⁵. Any such process to be served on any officer or rating subject to the Naval Discipline Act 1957⁶ is deemed to be served on him if served on the commanding officer of the ship or establishment in which the defendant is serving or on the books of which he is borne, and may be served by registered post⁷. These provisions do not enable process to be served in connection with proceedings in a magistrates' court, unless the defendant is within the United Kingdom or (if he is subject to the Naval Discipline Act 1957) on a ship, a home station or a naval establishment within the United Kingdom⁸. The service in the United Kingdom of the process is of no effect in relation to a defendant required to appear in person if his commanding officer certifies to the court which issued the process that the defendant is under orders for active service⁹, or, if the defendant is a member of the Naval forces, for service on a foreign station, and that in his opinion it will not be possible for the defendant to attend and return in time for embarkation for that service¹⁰. Further, the service of the process in the United Kingdom or elsewhere is of no effect in relation to a defendant required to appear at the hearing if his commanding officer certifies to the court that the defendant is absent without leave or has deserted and remains in desertion¹¹.

1 For the meaning of 'regular forces' see para 191 post. For the meaning of 'regular air force' see para 206 post. The provisions of the Army Act 1955 s 153 (as amended) also apply to members of the Royal Marines, the Royal Marines Reserve and the Royal Fleet Reserve: see s 210(4), Sch 7 Pt II para 19 (as amended); and para 74 note 2 ante. The Army Act 1955 s 153 (as amended), and the corresponding provisions of the Air Force Act 1955 s 153 (as amended), and of the Naval Discipline Act 1957 s 101 (as amended), apply to members of Her Majesty's naval, military and air forces attached to any part of each other's regular, reserve or auxiliary forces, because this result is not excluded by the Army Act 1955 s 208, Sch 6 para 9, the Air Force Act 1955 s 208, Sch 6 para 9, or the Naval Discipline Act 1957 s 113, Sch 2: see para 74 note 2 ante.

2 As to the prescribed circumstances in which these provisions apply to these reserve and auxiliary forces see the Army Act 1955 s 211(4) (as substituted), s 211(4A) (as added); the Air Force Act 1955 s 211(4) (as substituted), s 211(4A) (as added); and para 74 note 2 ante. See also paras 247, 311 post.

3 In any such order as is mentioned in the Army Act 1955 s 150(1) (as amended) or in the Air Force Act 1955 s 150(1) (as amended): see para 74 ante.

4 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 Army Act 1955 s 153(1); Air Force Act 1955 s 153(1) (both amended by the Armed Forces Act 1981 s 18(1), (2)). As an alternative to registered post, the recorded delivery service may be used: Recorded Delivery Service Act 1962 s 1(1). These provisions are without prejudice to any other method of service: see the Army Act 1955 s 153(1); and the Air Force Act 1955 s 153(1). As to service of documents generally see CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq.

6 For the persons so subject see para 306 post.

7 Naval Discipline Act 1957 s 101(1). Alternatively, service may be effected by the recorded delivery service: see the Recorded Delivery Service Act 1962 s 1(1).

8 Army Act 1955 s 153(4) (added by the Armed Forces Act 1971 s 62(1)); Air Force Act 1955 s 153(4) (added by the Armed Forces Act 1971 s 62(1)); Naval Discipline Act 1957 s 101(6).

9 For the meaning of 'active service' see para 305 post.

10 Army Act 1955 s 153(3); Air Force Act 1955 s 153(3); Naval Discipline Act 1957 s 101(4) (all amended by the Armed Forces Act 1981 s 18(1)-(3)).

11 Army Act 1955 s 153(3A); Air Force Act 1955 s 153(3A); Naval Discipline Act 1957 s 101(4A) (all added by the Armed forces Act 1981 s 18(1)-(3)). As to absence without leave and desertion see para 404 post.

UPDATE

77 Service of process in connection with maintenance orders

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. See now the Armed Forces Act 2006 s 355; and the Armed Forces (Service of Process in Maintenance Proceedings) Regulations 2009, SI 2009/1093.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(i) In general/78. Nature of civil interests protected; disabled persons.

(6) PROTECTION OF CIVIL INTERESTS

(i) In general

78. Nature of civil interests protected; disabled persons.

Many of the civil interests of persons called up for certain compulsory or, exceptionally, voluntary service in the armed forces are statutorily protected¹. Protection during such service is extended to persons serving in specified categories from the enforcement of certain court judgments and orders and the exercise of certain legal remedies², insecurity of tenure of the place of residence or business³ and loss of benefits under industrial assurance and friendly society contracts⁴. Provision is also made for the protection of superannuation rights⁵, and to ensure that a person serving receives an amount equal to that which he would otherwise receive as his civil remuneration⁶. Persons serving also enjoy statutory rights, in defined circumstances, to reinstatement in their former civil employment⁷.

1 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951; and para 79 et seq post. Many of the specific forms of protection are considered in more detail elsewhere in this work: see notes 2-5 *infra*.

2 See *ibid* ss 1-3 (s 2 as amended); and para 81 et seq post. The provisions of ss 1-13 (as amended) are largely based on the legislation as to the powers of the courts during the 1939-45 war, as consolidated in the Courts (Emergency Powers) Act 1943 (repealed). Decisions on that Act are therefore of value in interpreting the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 1-13 (as amended).

3 See *ibid* ss 14-36 (as amended); and *LANDLORD AND TENANT* vol 27(2) (2006 Reissue) paras 780 et seq, 1073 et seq. See also the Agricultural Holdings Act 1986 s 30, Sch 5 paras 1-6 (Sch 5 para 2 as amended) which entitles a tenant of an agricultural holding comprising a dwelling house, who is served with a notice to quit, to serve a counter-notice leading to the consideration by the Agricultural Land Tribunal of the extent, if any, to which the circumstances existing are attributable to the performance of a period of relevant service (as to which see para 79 post); and see *AGRICULTURAL LAND* vol 1 (2008) PARA 394.

4 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 54-59 (as amended); and *FINANCIAL SERVICES AND INSTITUTIONS* vol 50 (2008) PARAS 2375-2379; *INDUSTRIAL ASSURANCE* vol 24 (Reissue) para 248 et seq.

5 See *ibid* ss 42-45 (as amended), the provisions of which are made retrospective to 15 July 1950 by virtue of s 44. Section 41 (extending the application of the Superannuation (Miscellaneous Provisions) Act 1948 s 1 (repealed) is itself repealed, but, notwithstanding these repeals, the Superannuation (Local Government Staffs) (National Service) Rules 1949, SI 1949/545 (amended by SI 1951/2145; SI 1954/1228), which provide for the protection of the superannuation rights of local government employees when performing service as specified in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 41, Sch 1 (as amended), and which were made under the repealed enactments, are saved by the Superannuation Act 1972 s 29(2), Sch 7 para 15. Similar provisions to protect the superannuation rights of teachers were contained in the Teachers' Superannuation (National Service) Rules 1949, SI 1949/468 (amended by SI 1952/137), but, in the absence of any serving provisions relating to these in the Superannuation Act 1972, they have lapsed. As to civil servants see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) para 576 et seq. As to the superannuation rights of regular firemen see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 42; the Fire Services Act 1947; and the Firemen's Pension Scheme 1992 (contained in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended)); and *FIRE SERVICES* vol 18(2) (Reissue) paras 45-58. As to the police see the Police Pensions Act 1976; and *POLICE* vol 36(1) (2007 Reissue) para 407 et seq.

6 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Pt V (ss 46-52), Sch 2 (as amended); and para 88 et seq post.

7 See para 92 post.

UPDATE

78 Nature of civil interests protected; disabled persons

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 5--1947 Act replaced by Fire and Rescue Services Act 2004. See also Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432; Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072; and FIRE SERVICES vol 18(2) (Reissue) PARA 45-58.

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79. Service qualifying for protection.

The categories of service, called 'relevant service', in which persons¹ serving are protected are the following²:

- 10 (1) service in pursuance of any notice or directions given under any enactment providing for the calling out on permanent service³, or the calling out⁴ of any members of a reserve or auxiliary force, or the recall of service pensioners⁵;
- 11 (2) service other than for the purposes of training only, in pursuance of any obligation or undertaking, whether legally enforceable or not, to serve as a commissioned officer other than on a short service or permanent commission⁶;
- 12 (3) voluntary service for a period of 18 months undertaken by any officer of any naval or marine reserve force or an officer or reserve to, or on the retired or emergency list, of, or holding a temporary commission in, the Royal Navy or Royal Marines⁷;
- 13 (4) service for the purposes of training only, either under an obligation or under voluntary arrangements, performed for a continuous period of at least seven days, by officers or men of the naval, marine, military or air force reserve or auxiliary forces, not being service of a description specified in any of the preceding heads⁸; and
- 14 (5) any service rendered by virtue of certain provisions⁹ of the Reserve Forces Act 1980¹⁰.

1 This includes both men and women: see para 18 ante.

2 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 64(1), Sch 1 (as amended).

3 I.e. under the Reserve Forces Act 1996 ss 50-64: see para 232 et seq post. Persons who have entered into special agreements or employee agreements under Pt IV (ss 28-37) (as amended) and Pt V (ss 38-49) (as amended) are also included: see para 245 post.

4 The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 refers to 'embodiment', which formerly applied in relation to the Territorial Army and the Royal Auxiliary Air Force; when either of these was embodied, its members could be given notice to present themselves for service. This expression is no longer used, and the Reserve Forces Act 1996 refers to the liability of members of these forces to be 'called out for permanent service'.

5 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 1 para 1(i) (amended by the Reserve Forces (Safeguard of Employment) Act 1985 s 21, Sch 4; and the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 10(1)). See also the Reserve Forces Act 1996 ss 65-77; and para 239 post.

6 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 1 para 1(ii).

7 Ibid Sch 1 para 4.

8 See ibid Sch 1 para 7(a)-(c). Service within this category, performed under an obligation or voluntary arrangements under which its duration is limited to less than three months, is defined as a 'short period of training': s 64(1) (definition amended by the Statute Law (Repeals) Act 1977).

9 I.e. any service rendered by virtue of the Reserve Forces Act 1980 s 34 (as amended; prospectively repealed) (certain categories of former soldiers, under the age of 45 and not being women, recalled for service): see para 238 post.

10 Ibid s 146(1). As from a day to be appointed, this provision is repealed by the Reserve Forces Act 1996 s 131(2), Sch 11. At the date at which this volume states the law no such day had been appointed. See para 17 note 3 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(i) In general/80. Evidence of service and presumption of death.

80. Evidence of service and presumption of death.

A certificate, signed by a person authorised by the Defence Council¹, stating that a person has or has not performed, or is or is not performing or is to perform, a period of relevant service² or of relevant service of any particular description, or the duration or the date of the beginning or ending of such a period, or whether such a period which has been or is being or is to be performed by any person is or is not a short period of training³, is sufficient evidence, for the purposes of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, in all legal proceedings of the facts stated in it⁴, except to any extent to which the certificate is shown to be incorrect⁵. Any such certificate, signed by a person authorised by the Defence Council, referring to an inquiry as to a person described in it, to the effect that no person answering to that description is identifiable in the records kept by the Defence Council, is sufficient evidence that no such person is identifiable⁶.

When it is necessary to determine whether a person has died while performing relevant service⁷, the question must be determined in accordance with the following rules⁸. If the appropriate authority⁹ is satisfied that a person has been officially reported¹⁰ as dead, or as missing and presumed dead, he is to be treated as having died while performing relevant service unless and until the authority is satisfied that a person has subsequently been officially reported as alive¹¹. If the appropriate authority is satisfied that a person has been officially reported as missing, it may, if it thinks fit, treat him as having died while performing relevant service unless and until it is satisfied that he has subsequently been officially reported as alive¹². No person is to be treated as having died while performing relevant service unless and until the appropriate authority is satisfied that he has been officially reported as dead or as missing¹³. Any payment to make up civil remuneration, made on the footing that the person concerned was alive after the date fixed from which he is treated as being dead, is irrecoverable¹⁴.

1 As to the Defence Council see para 2 ante.

2 For the meaning of 'relevant service' see para 79 ante.

3 For the meaning of 'short period of training' see para 79 note 8 ante.

4 A certificate may, however, disprove itself by being contradictory: *Allison v Johnson* (1902) 46 Sol Jo 686.

5 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 60(1), (2) (amended by the Statute Law (Repeals) Act 1977; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). It is the duty of the Defence Council to issue a certificate if the facts justify it, unless to do so would, in the Defence Council's opinion, be against the interests of national security: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 60(6) (amended by the Statute Law (Repeals) Act 1977). A signed certificate stating any matter as a matter appearing from records is to be treated as stating it as a fact: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 60(4). A document purporting to be a signed certificate is deemed to be such unless the contrary is proved: s 60(5).

6 Ibid s 60(3) (amended by the Statute Law (Repeals) Act 1977; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

7 Ie for the purposes of: (1) the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Pt V (ss 46-53) (as amended) (see para 88 et seq post); (2) any regulations made under the Superannuation Act 1972 s 7 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 875) or s 10 (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 711); (3) any local Act scheme; (4) the Firemen's Pension Scheme made under the Fire Services Act 1947 (see FIRE SERVICES vol 18(2) (Reissue) para 46 et seq); and (5) any regulations made under the Police

Pensions Act 1976 (see POLICE vol 36(1) (2007 Reissue) para 407 et seq): Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 61(1)(a)-(e) (amended by the Superannuation Act 1972 s 29(1), Sch 6 para 31); Interpretation Act 1978 s 17(2). 'Local Act scheme' means the superannuation scheme administered by a local authority maintaining a superannuation fund under a local Act: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 64(1) (definition substituted by the Superannuation Act 1972 Sch 6 para 32).

8 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 61(1). Where the appropriate authority determines in accordance with the rules that a person is to be treated as having died, the date of his death is to be taken to be such date as the authority may fix on the evidence available to it: s 61(3).

9 For this purpose, 'the appropriate authority' means the authority specified in *ibid* s 47(1) or s 47(2) (see para 89 post): s 61(5) (amended by the Health Authorities Act 1995 s 5(1), Sch 3).

10 'Officially reported' means reported on behalf of the Defence Council: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 61(6); Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I.

11 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 61(2)(ii).

12 *Ibid* s 61(2)(iii).

13 *Ibid* s 61(2)(i).

14 *Ibid* s 61(4), Sch 3 para 1(1), (2). Where any payments have been made under s 46(2) for a period after the date on which the officer concerned is to be treated as having died, any pension payments to a dependant in respect of that period may only be made if and to the extent that the appropriate authority so directs: Sch 3 para 1(3). As to the rules applicable where an authority determines that a person is to be treated as having died and subsequently determines that he is to be treated as alive see Sch 3 para 2.

UPDATE

80 Evidence of service and presumption of death

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 7--1947 Act replaced by the Fire and Rescue Services Act 2004. Now, head (4) a scheme made under s 34: 1951 Act s 61(1)(d) (substituted by the 2004 Act Sch 1 para 12).

NOTE 14--1951 Act Sch 3 paras 1(3), 2 amended: Civil Partnership Act 2004 Sch 26 para 27.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/81. Scope of entitlement to protection.

(ii) Protection against Legal Remedies

81. Scope of entitlement to protection.

Certain legal rights and remedies¹, some judicial and some extra-judicial, may be exercised against a person performing a period of relevant service² only with the permission of the appropriate court³. A person who has been performing a period of such service is entitled to the same measure of protection if an application for permission to exercise the remedy was made during the period of his service and the appropriate court has not directed that that protection is not to apply⁴. In any case where an application to the court is required in order to exercise a right or remedy, the court may refuse permission⁵, or grant it subject to such restrictions or conditions as it thinks proper⁶, if it is of opinion⁷ that the person liable⁸ to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question, is unable immediately to do so⁹ by reason of circumstances directly or indirectly attributable to a period of relevant service being, or having been, performed¹⁰ by himself or someone else¹¹.

The protection may also be extended, by the direction of the appropriate court, to any person liable¹², on application by him to the court, if the court is satisfied¹³ that he is unable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation in question, by reason of circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service¹⁴.

No one can contract out of the requirement of permission of the court, nor may the protection be waived¹⁵; but, once permission has been granted, the person to whom it has been granted is in the same position (subject to any restrictions or conditions imposed by the court on his exercise of the right or remedy in question) as if the Act giving protection had never been passed¹⁶. Where, however, a remedy is exercised pursuant to an agreement in good faith replacing a former agreement, to remedy a default which would have required permission, there is no protection¹⁷. It would seem on general principles that this statutory protection against legal remedies does not bind the Crown¹⁸.

1 As to these rights and remedies see para 82 et seq post.

2 For the meaning of 'relevant service' see para 79 ante.

3 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 2(1)-(3), (6), 3(1)(a) (s 2(1) amended by the Children Act 1989 s 108(5), (6), Sch 13 para 12, Sch 14 para 1; and the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(6) amended by the Statute Law (Repeals) Act 1993). 'Appropriate court', in England or Wales, means such court as may be designated by rules made by the Lord Chancellor: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 5(1). As to the courts so designated for each particular form of proceedings see the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 5-8. A person restrained from proceeding to execution remains, nevertheless, a party entitled to enforce a judgment for the purposes of an order for examination of a judgment debtor: *Brown v Stafford* [1944] KB 193, [1944] 1 All ER 172, CA; and see generally CIVIL PROCEDURE vol 12 (2009) PARA 1251 et seq. The provisions of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 are extended, with modifications, to Northern Ireland: see s 65 (amended by the Northern Ireland Constitution Act 1973 s 41(1), Sch 6 Pt I); and the Reserve and Auxiliary Forces (Protection of Civil Interests) (Northern Ireland) Order 1953, SI 1953/197. For the procedure generally and on applications for permission to enforce judgments or exercise remedies see the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 9-20 (High Court), rr 21-34 (county court), rr 35, 36 (magistrates' and other courts), rr 37-41, Appendix.

4 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 3(1)(b).

5 The court has an absolute discretion whether or not to give permission: *Metropolitan Properties Co Ltd v Purdy* [1940] 1 All ER 188, CA.

6 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(4). Omission to obtain permission, or failure to observe a restriction or condition attached to the granting of permission, does not render invalid, or alter the effect of: (1) anything which would have operated as a transfer of title to, or possession of, any property if permission had not been required or the restriction or condition not imposed; (2) any payment, receipt, appointment or other transaction; or (3) any legal proceedings (s 13(1)(a)-(c)); and neither does the contravention of an order prohibiting the owner of goods let under a hire purchase agreement from taking possession of the goods (see s 4(5)) have any such effect (s 13(1)). Exemplary damages may, however, be awarded (subject to regard being had to the conduct of the defendant) in any action or other proceedings which may lie by virtue of any such omission, failure or contravention (s 13(2)); nevertheless, the defendant may be relieved from liability in any such action or proceedings if the court is satisfied that he acted honestly and reasonably and ought fairly to be excused (s 13(3), (5)(a)). To remedy the results of any such omission, failure or contravention, the court may (as far as practicable, and specifically without prejudice to the third parties) give directions for the restoration of property, repayment of money or other measures: see s 13(4).

7 Cf the words 'on being satisfied' used in *ibid* s 3(1)(c)(i), with reference to the consideration of an application made by the person liable (see notes 8, 12 *infra*) for an extension of the protection to himself. This difference in wording may suggest that a stricter burden of proof is imposed on the person liable when he is the applicant and the issue is whether to extend protection to him at all, than when he is resisting an application for permission to exercise a right or remedy. It has, however, been held, in cases of applications for permission to exercise a right or remedy (decided under the similar provisions of the Courts (Emergency Powers) Acts 1939 to 1943 (repealed) where the enactment provided that the court might refuse permission if of the opinion that the person liable was unable to meet his obligation by reason of circumstances directly or indirectly attributable to the war) that the onus was on the person liable to satisfy the court that his inability was due to those circumstances: *Tomley v Gower and McAdam* [1939] 4 All ER 460; *Southern Counties Building Society v Eastwood Priory Ltd* [1947] LJR 1097. It is clear from the express words of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 that this is the position where the application is by the person liable for the protection to be extended to himself: see s 3(1)(c)(i). Thus it seems that whichever party is the applicant to the court, the onus is placed on the person liable to satisfy the court that protection should be extended, or permission to appeal refused, as the case may be.

8 The person liable to meet whatever obligation is in question is the person who entered into that obligation, whether or not he is a nominee of, or a trustee for, some other person; he is the only person against whom the permission of the court to enforce the obligation may be granted: *Re Royal Mutual Building Society's Application (Turner)* [1942] 1 All ER 578. Where it is sought to exercise a right or remedy against one such person, or against property in which that person has an interest or of which he is in possession, separately from any others who are also so liable, references to the person liable refer to that person alone; but, if it is sought to exercise it against two or more persons jointly, such references refer to all such persons: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 3(7).

9 The person liable must prove his inability immediately to meet the obligation in question: see note 7 *supra*; and the cases there cited. See also *Re Griffiths, Re Davies' Contract* [1940] 1 All ER 528, CA; *A v B* [1940] 1 KB 217, [1939] 4 All ER 169, CA, where the mere possession of a sum of money sufficient to meet a debt was held not to be conclusive of an ability to pay the debt. The court may be able to infer the inability even if the person liable fails to prove it: see *Bowmaker Ltd v Tabor* [1941] 2 KB 1 at 6-7, [1941] 2 All ER 72 at 76, CA, per Goddard LJ. The person liable must produce evidence of his private resources, eg a bank book: *Landau v Huberman* [1940] 2 All ER 66, CA. As to the question of ability to pay see also *Re Legal Charge Dated 26th November 1937* [1949] 1 All ER 477. In determining whether there is an immediate inability to pay, the court may take into account other present or future liabilities: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(5). As to the procedure where a person liable desires such other liabilities to be taken into account see the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 13, 31, 36. Where the application which the person liable is resisting is for permission to enforce a judgment for the recovery of possession of land (see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(3); and para 83 *post*), the literal application of the provisions of s 2(4) would virtually deprive him of all protection, as he would always be able to deliver up possession of the land; it is therefore submitted that the provisions as to what the person liable must prove must be applied to the basis of the order for possession, ie the inability to pay the rent or other money owing: see eg *Blanket v Palmer* [1940] 1 All ER 524, CA; *Brandon v Reidy* [1940] 2 KB 194, [1940] 2 All ER 474; *Re Chalfont and District Permanent Building Society's Application* [1941] Ch 458, [1941] 3 All ER 41; *Wallrock v Equity and Law Life Assurance Society* [1942] 2 KB 82, [1942] 1 All ER 510, CA.

10 That the circumstances are attributable to the performance of relevant service must be proved by the person liable: see the cases cited in notes 7, 9 *supra*; and see especially *Re Griffiths, Re Davies' Contract* [1940] 1 All ER 528, CA. An aggravation by relevant service of pre-existing difficulties does not suffice: see *Tomley v*

Gower and McAdam [1939] 4 All ER 460; *Southern Counties Building Society v Eastwood Priory Ltd* [1947] LJR 1097. Nor is a return of financial difficulties, which existed before the relevant period and became easier during it, sufficient to discharge the burden of proof: *Tritonia Ltd v Hepburn and Ross* 1947 SC (HL) 20 (decided on comparable Scottish legislation).

11 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(4).

12 The person liable in *ibid* s 3(1)(c), as in s 3(1)(a), (b), is the person who is liable to satisfy the judgment or order, pay the debt, or perform the obligation, in question. Presumably the meaning of the expression is the same whether such a person is making an application for protection to be extended to him or resisting an application for permission to exercise a remedy against him. See also note 8 *supra*. Where the application concerns the enforcement of a judgment or order for the recovery of possession of land in default of payment of rent (see para 83 *post*), the only person liable is the person against whom the judgment or order was made and who is, or would be but for any forfeiture incurred in consequence of the default, entitled to the benefit of the lease under which the rent was reserved: s 3(6).

13 See note 7 *supra*.

14 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 3(1)(c)(i). The protection is extended by a declaratory order which may be obtained at the trial or at any time afterwards: see the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 2(1), 7, 10, 23. If the person liable has given to the person seeking to exercise the right or remedy, or to any person proceeding to its enforcement, written notice of his intention to make an application for protection, or if he has made it and it has not been disposed of, he is entitled to the measures of protection as if they had been granted, but, in the case of written notice of his intention, only for 14 days after the notice has been given: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 3(1)(c)(ii), (2), (3). A longer period than 14 days may be prescribed by rules for any class of case (see ss 3(2), 5(2)), but no such longer period had been prescribed at the date at which this volume states the law. As to the appropriate court and the procedure to be followed on applications see s 5; and the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401. Where an order has been made under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 3(1)(c), on the application of the person liable, the powers of the court are exercisable as if an application had been made for permission to exercise the right or remedy (see the text and notes 5-11 *supra*) by the person entitled to make it: s 3(4). As to the burden of proof on applications under these provisions see notes 7, 9 *supra*.

15 *Soho Square Syndicate Ltd v E Pollard & Co Ltd* [1940] Ch 638, [1940] 2 All ER 601; *Bowmaker Ltd v Tabor* [1941] 2 KB 1, [1941] 2 All ER 72, CA (both cases decided upon corresponding provisions in the Courts (Emergency Powers) Act 1939 (repealed)).

16 *Re A Debtor, ex p Dunn Trust Ltd* [1940] Ch 65 at 68, [1939] 4 All ER 337 at 338 per Farwell J.

17 See *Smart Bros Ltd v Ross* [1943] AC 84 at 90, [1942] 2 All ER 282 at 284-285, HL, per Viscount Simon LC, and at 92 and 285 per Lord Atkin. It was held that the beneficiary under a new agreement, in taking advantage of it, was not exercising a remedy for a default in the performance of the original agreement, but was accepting the performance of the new agreement which had displaced the earlier one, and therefore needed no permission from the court. Nor was the new agreement merely a waiver or a contracting-out of the original one; this would have been inoperative: see the text and note 15 *supra*, and the cases there cited. See further para 85 note 6 *post*.

18 *Ie* on the principle that the Crown is not bound unless it is expressly stated, or there is a necessary implication in the enactment that it is intended that the Crown should be bound: see *Thomas v Pritchard* [1903] 1 KB 209; and STATUTES vol 44(1) (Reissue) para 1321. See also *A-G v Hancock* [1940] 1 KB 427, [1940] 1 All ER 32 (decided on a corresponding provision of the Courts (Emergency Powers) Act 1939 (repealed)). The provisions of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Pt III (ss 26-40) (as amended), as to rights to grants of fresh tenancies or renewals of tenancies during or shortly after periods of relevant service, are expressly applied to Crown property: see s 35; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) para 780.

UPDATE

81 Scope of entitlement to protection

NOTE 3--The Lord Chancellor's function under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 5 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 14--1951 Act s 5 amended: 2005 Act Sch 1 para 8, Sch 4 para 41.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/82. Bankruptcy petitions.

82. Bankruptcy petitions.

Where a bankruptcy petition is presented against a debtor and the court having jurisdiction in the bankruptcy is satisfied that his inability to pay his debts is due to circumstances directly or indirectly attributable to his or someone else's performing or having performed a period of relevant service¹, it may stay the proceedings under the petition for such time and subject to such conditions as it thinks fit².

1 For the meaning of 'relevant service' see para 79 ante. The onus is on the debtor to satisfy the court: (1) as to his inability to pay his debts; and (2) that this inability is attributable, directly or indirectly, to the circumstances stated: see para 81 text and notes 7-13 ante. What must be proved by the debtor, moreover, is not the attributability to relevant service of his present inability to pay his debts, but the attributability to that cause of his failure to comply with the bankruptcy notice on which the petition is founded; if that is not proved, no case for granting relief to the debtor is made out: *Re A Debtor (No 13 of 1939)* [1940] Ch 157, [1940] 1 All ER 227.

2 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(6)(a).

The jurisdiction of the court to stay the bankruptcy proceedings is not limited to cases where the debt arises out of a contract made before the relevant date (ie that of the commencement of the period of relevant service): *Re Middlesex Brick Co Ltd* [1942] 1 Ch 65, [1941] 3 All ER 410. It is not settled, however, whether a debtor whose liability arises on a contract can rely on circumstances existing before the contract as being attributable to the relevant service and so bring himself within the statutory protection: see, in favour, *Re Middlesex Brick Co Ltd* supra; and, contra, *Re Debtors (Nos 2 and 3 of 1944)* [1944] Ch 398, [1944] 2 All ER 525. Further, this relief may presumably be granted even if relief has been refused with regard to other remedies for the exercise of which permission is required: see *Re A Debtor (No 12 of 1940), ex p Petitioning Creditors v Debtor* (1940) 84 Sol Jo 683, DC, from which it appears, however, that in such circumstances the court will be reluctant to grant relief, and will not do so if the debtor has attempted to give a fraudulent preference to a creditor.

As to the conditions which may properly be imposed when granting or refusing a stay see *Re Debtors (Nos 2 and 3 of 1944)* supra, in which it was held that conditions which involve a preference of the petitioning creditor are not to be attached to the granting of a stay.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/83. Judgment or order concerning land.

83. Judgment or order concerning land.

In cases within the scope of the statutory protection in connection with the performance of relevant service¹, no person is entitled to proceed, except with the permission of the appropriate court², to execution on, or otherwise to the enforcement³ of, a judgment or order of any court⁴ given at any time for the recovery of possession of land⁵ in default of payment of rent⁶, or for the delivery of any property other than mortgaged property by reason of a default in the payment of money⁷, unless that judgment or order was given or made in proceedings for the enforcement of a contract made after the relevant date⁸.

1 As to the scope of this protection see para 81 ante. For the meaning of 'relevant service' see para 79 ante.

2 For the meaning of 'appropriate court' see para 81 note 3 ante.

3 As to certain acts which are deemed to amount to proceeding to execution on, or otherwise enforcing, a judgment or order see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 3(9). An application for disclosure in aid of execution is not treated as a step towards enforcement of a judgment or order or as the taking out of a judicial process: s 3(9) proviso (ii). An examination of a judgment debtor is not a step towards proceeding to execution: see *Fagot v Gaches* [1943] 1 KB 10, [1942] 2 All ER 476, CA. As to when execution is completed see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 6(3).

4 ie including a county court: cf *ibid* s 2(1); and see para 84 post.

5 This includes any judgment or order the effect of which is to enable a person to obtain possession of land: *ibid* s 6(4).

6 As to the effect of a judgment or order for recovery of possession which relates to a dwelling house let on, or subject to, a protected tenancy or statutory tenancy within the meaning of the Rent Act 1977 see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 4(2) (amended by the Rent Act 1977 s 155(2), Sch 23 para 2); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) para 949.

The only person who is entitled to protection against this remedy is the person against whom the judgment or order was given or obtained, he being the person liable to pay the rent and consequently entitled to resist an application for permission to enforce the judgment or order (ie under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(4)) or to apply for the protection to be extended to him (ie under s 3(1)(c)). See also para 81 notes 8, 12 ante.

7 It was formerly open to a person who had obtained a judgment or order for the delivery up of property other than land to seek to enforce it without obtaining permission from the court: *S and A Services Ltd v Dickson* [1940] 2 KB 219, [1940] 3 All ER 98, CA.

The exclusion of mortgaged property from the protection given is due to the fact that the need to obtain permission to institute or continue proceedings for the recovery of possession of mortgaged property is provided for by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2)(b): see para 86 post.

8 *Ibid* s 2(3). See also CIVIL PROCEDURE vol 12 (2009) PARA 1241. 'The relevant date' means the date on which the serviceman in question began to perform the period of relevant service, but, as respects contracts made after that date, where he performs two or more such periods the relevant date is that on which he began the later or latest period of service: s 3(10) proviso (a).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/84. Judgments or orders for the recovery of money.

84. Judgments or orders for the recovery of money.

In cases within the scope of the statutory protection in connection with the performance of relevant service¹, no person is entitled to proceed, except with the permission of the appropriate court², to execution on, or otherwise to the enforcement³ (except by judgment summons⁴) of, a judgment or order, other than certain excepted categories⁵, of any court, other than a county court⁶, for the payment or recovery of a sum of money, whenever given or made⁷. The excepted categories of judgments or orders are: (1) judgment for the recovery of damages for tort⁸; (2) judgments or orders for the recovery of a debt which has become due by virtue of a contract made after the relevant date⁹; (3) judgments or orders under which no money is recoverable except in respect of costs¹⁰; (4) orders for alimony, maintenance or other payments¹¹; and (5) orders made in criminal proceedings for the recovery of a penalty¹² in respect of contravention of, or failure to comply with, any statutory provisions¹³.

1 As to the scope of this protection see para 81 ante. For the meaning of 'relevant service' see para 79 ante.

2 For the meaning of 'appropriate court' see para 81 note 3 ante.

3 As to proceeding to execution on, or enforcing, a judgment or order see para 83 note 3 ante.

4 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(1) proviso. The reference to judgment summons relates to the procedure (now much restricted in its application by the Administration of Justice Act 1970 s 11, Sch 4 (as amended)) for committal under the Debtors Act 1869 s 5 (as amended): see CONTEMPT OF COURT vol 9(1) (Reissue) para 486.

5 See the text and notes 8-13 infra. Moreover, claims in respect of the driving of motor vehicles are usually actions for damages in tort, but in such a case the enforcement of a judgment in favour of the claimant, without permission of the court, is not precluded by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951: see s 2(1); and the text and notes 8-13 infra. Hence, if the judgment debtor is not covered, in respect of the claim, by a policy of insurance, the Motor Insurers Bureau will satisfy the judgment if it is not satisfied in full within seven days of its becoming enforceable: see the Motor Insurers' Bureau (Compensation of Victims of Uninsured Drivers) Agreement cl 2; and INSURANCE vol 25 (2003 Reissue) para 758 et seq.

6 Nevertheless a county court has itself wide powers of suspending or staying any judgment or order of its own, including the power to do so if at any time it is satisfied that any party to any proceedings is for any cause unable to pay any sum recovered against him, or any instalment, and to stay any execution in the proceedings: see the County Courts Act 1984 ss 71, 88; and CIVIL PROCEDURE vol 12 (2009) PARAS 1229, 1363.

7 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(1).

8 Ibid s 2(1) proviso (a). As to the dividing line between damages for tort and damages for breach of contract see CIVIL PROCEDURE vol 11 (2009) PARA 20; CONTRACT vol 9(1) (Reissue) para 608; TORT vol 97 (2010) PARA 404.

9 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(1) proviso (b). For the meaning of 'the relevant date' see para 83 note 8 ante.

10 Ibid s 2(1) proviso (c). The cases in which no permission is required include that in which an order for costs is made against a claimant in a claim brought by him for the recovery of money (*Re A Bankruptcy Notice* (1940) 84 Sol Jo 204, CA), or judgment is given for damages to be ascertained and for costs until the damages have been ascertained (*Fagot v Gaches* [1943] KB 10, [1942] 2 All ER 476, CA).

11 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(1) proviso (d) (substituted by the Children Act 1989 s 108(5), (6), Sch 13 para 12, Sch 14 para 1). The orders referred to in the text are those made under the Matrimonial Causes Act 1973 ss 21-33 (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW), or made, or having effect as if made, under the Children Act 1989 s 15(1), Sch 1 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) paras 539-551).

12 As to the distinction between criminal proceedings and proceedings for the recovery of a penalty recoverable in a civil court as a civil debt see *Brown v Allweather Mechanical Grouting Co Ltd* [1954] 2 QB 443 at 446, [1953] 1 All ER 474 at 475, DC, per Lord Goddard CJ. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 2.

13 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(1) proviso (e).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/85. Extra-judicial remedies.

85. Extra-judicial remedies.

In cases within the scope of the statutory protection in connection with the performance of relevant service¹, no person is entitled, except with the permission of the appropriate court², to proceed to exercise any remedy³, with certain exceptions⁴, which is available to him by way of the levying of distress⁵, the taking of possession⁶ or the appointment of a receiver⁷ of any property, re-entry upon land⁸, the realisation of a security⁹ or the forfeiture¹⁰ of a deposit¹¹.

1 As to the scope of this protection see para 81 ante. For the meaning of 'relevant service' see para 79 ante.

2 For the meaning of 'appropriate court' see para 81 note 3 ante.

3 With the exception of the levying of distress for rates (see note 5 infra) all the remedies specified in the text are extra-judicial: see *S and A Services Ltd v Dickson* [1940] 2 KB 219, [1940] 3 All ER 98, CA; *Whitstable UDC v Tritton* [1941] 3 All ER 405, CA. The only remedies which are within the scope of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2)(a) are those which are available in consequence of some default in the payment of a debt or the performance of an obligation, and of which the effect is to determine some existing right or interest which, but for the default, would not be determined; s 2(2)(a) does not require permission of the court to exercise a remedy which becomes available simply by virtue of the proprietary right of the person who exercises it, not to defeat or determine the right of someone else, but merely to recover for himself something which is his own: *Butcher v Poole Corp* [1943] KB 48, [1942] 2 All ER 572, CA (the taking possession of land by evicting a trespasser was held not to be within the protection and permission of the court was not required); and cf *Smart Bros Ltd v Ross* [1943] AC 84, [1942] 3 All ER 282, HL.

4 See para 87 post.

5 This includes distress for rates (Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 6(2)), but not distress damage feasant (*Watkinson v Hollington* [1944] KB 16, [1943] 2 All ER 573, CA). See *Stepney Borough Council v Woolf* [1943] KB 202 at 208, [1943] 1 All ER 64 at 68, DC. See further DISTRESS vol 13 (2007 Reissue) paras 902, 1104 et seq. As to the procedure to obtain permission see note 11 infra.

6 This includes a forfeiture of shares for non-payment of calls (*Burgess v OHN Gases Ltd* (1914) 31 TLR 59) and also the repossession of goods, the subject of a hire purchase agreement, under a clause in the agreement (*Bowmaker Ltd v Tabor* [1941] 2 KB 1, [1941] 2 All ER 72, CA; *Carr v Broderick & Co Ltd* [1942] 2 KB 275, [1942] 2 All ER 441). The repossession of goods the subject of a conditional sale agreement is also within the scope of the protection: see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 4(5) (s 4(4), (5) substituted by the Consumer Credit Act 1974 s 192(3), Sch 4 Pt I para 12). It is submitted that the protection also applies to the repossession of goods the subject of a credit sale agreement: see infra. Where, however, goods covered by a hire purchase agreement were retaken from the defaulting hirer, not under that agreement but under a new agreement between the parties cancelling the hire purchase agreement and providing for the retaking of the goods on agreed terms, it was held that the owners were not exercising a remedy which had been available to them under the hire purchase agreement, and permission of the court was not required: *Smart Bros Ltd v Ross* [1943] AC 84, [1942] 2 All ER 282, HL; cf *Chatterton v Maclean* [1951] 1 All ER 761; and para 81 text and note 17 ante. If the court refuses permission under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 4(2) (as amended) (see para 81 ante) to take possession of goods subject to a hire purchase agreement or a conditional sale agreement, or to execute a judgment or order for their delivery, or gives permission on conditions, and the person to whom the goods are bailed, or, as the case may be, the buyer, before possession is taken, or the execution completed, pays the total price, the title to the goods vests in him, even though he did not pay the price at the times required by the agreement: s 4(4) (as so substituted). As to the scope of a direction by the court under s 3(1) (see para 81 ante) in favour of the person liable, given after the owner has retaken possession of the goods see s 4(5) (as so substituted).

A notice under the Law of Distress Amendment Act 1908, served on a subtenant by the superior landlord, requiring the payment of rent direct to the superior landlord to pay off arrears of rent of the immediate landlord, is not a taking of possession: see DISTRESS vol 13 (2007 Reissue) para 960.

As to the procedure to obtain permission to take possession of property see note 11 infra.

7 le the appointment of a receiver out of court. A receiver appointed with permission of the court according to the statutory provisions may be replaced without such permission unless the office is vacant for so long that a new receivership is created by the new appointment: *Re White's Mortgage, Public Trustee v White* [1943] Ch 166, [1943] 1 All ER 399. As to the procedure to obtain permission to appoint a receiver extra-judicially see note 11 infra. As to the conditions under which a receiver may be appointed and special provisions concerning such an appointment when a mortgagee of a dwelling house applies to enforce either any of the extra-judicial remedies or the proceedings for byelaws etc see the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 14, 31, 36.

8 This covers any re-entry which constitutes the exercise of a remedy available to the party concerned, eg by a vendor who has let the purchaser into possession, on the rescission of a contract for the sale of land due to the purchaser's failure to complete and pay the purchase price: *Re Griffiths, Re Davies' Contract* [1940] 1 All ER 528, CA. Reoccupation by a lessor following the expiry of the lease, or re-entry evicting a trespasser, would not be within the scope of this protection, and permission of the court to take either of those steps would not be required: *Butcher v Poole Corpn* [1943] KB 48, [1942] 2 All ER 572, CA; and see note 3 supra. As to procedure to obtain permission to re-enter see note 11 infra.

9 The making of a contract by a mortgagee not in possession for the sale of the mortgaged property does not in itself constitute the realisation of a security; permission may therefore be obtained at any time before completion: see *Braybrooks v Whaley* [1919] 1 KB 435, DC. As to the procedure see note 11 infra. As to the power of sale possessed by a receiver appointed by a debenture holder see *Re Brown & Son (General Warehousemen) Ltd* [1940] Ch 961, [1940] 3 All ER 638; *Re Wood's Application* [1941] Ch 112, [1940] 4 All ER 306. The cutting off of the gas supply is not the realisation of a security: see *Perry v South Metropolitan Gas Co* [1940] 1 All ER 591.

10 The giving of notice that forfeiture will be claimed unless the purchase is completed by a certain date does not amount to an actual forfeiture, and consequently does not require prior permission of the court: *O'Hara v Lipman* [1941] Ch 57, [1940] 4 All ER 223. On the other hand, permission is required to entitle a vendor to forfeit the deposit paid to him by the purchaser on a contract for the sale of land, when the purchaser is unable to complete the contract: *Re Griffiths, Re Davies' Contract* [1940] 1 All ER 528, CA.

11 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2)(a). An application for permission to exercise any of these remedies is by way of claim form to which the respondent is not required to acknowledge service: see the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 12, 28, 29. Any action taken before a court is not within the purview of this provision, the protection of which extends only to extra-judicial remedies: see note 3 supra, and the cases there cited. Prior application for permission of the court is not required for an order for rescission of a contract and forfeiture of a deposit after default of the defendant on the contract which provided for such forfeit in case of default: *John Barker & Co Ltd v Littman* [1941] Ch 405, [1941] 2 All ER 537, CA. A person affected or claiming to be affected by an exercise or purported exercise by a mortgagee of any property of any of these remedies, or those referred to in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2)(b) (see para 86 post), arising because of a default in the payment of mortgage money or breach of a mortgage obligation, is treated as a person liable: s 3(8). Permission is, however, required as against that person only where the person liable or the person affected has applied to the court for protection to be extended to him under s 3(1)(c) (see para 81 ante): s 3(8) proviso. Where a mortgagee applies for permission to exercise any of the remedies referred to in s 2(2)(b) (see para 86 post), he must state the name of any person he knows would be affected by the exercise of the remedy, the interest of such person in the property and, if known by the applicant, whether that person is for the time being performing a period of relevant service, and the court or judge may conduct a hearing on the question of the persons who are to receive notice of the application for permission: Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951, SI 1951/1401, rr 15, 32. The statutory provisions together with the rules no doubt operate to include persons such as the trustee in bankruptcy, the mortgagor or assignee of the mortgagor or a surety who is under no personal covenant to pay off the debt, who were excluded from the corresponding provisions of the previous legislation: see *Re Midland Bank Ltd's Application* [1941] Ch 350, sub nom *Franklin v Midland Bank Ltd* [1941] 2 All ER 135; *National Provincial Bank Ltd v Liddiard* [1941] Ch 158, [1941] 1 All ER 97; *Re Woolwich Equitable Building Society's Application (Haywood)* [1942] Ch 253, [1942] 1 All ER 284. Although it has been said that a person affected must have a legal or equitable interest in the property, which a bankrupt has not (see *Jarrett v Barclays Bank Ltd* [1947] Ch 187 at 194-195, [1947] 1 All ER 72 at 76-77, CA, per Morton LJ), this does not seem necessarily to follow from the rules.

UPDATE

85 Extra-judicial remedies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/86. Proceedings for foreclosure, sale or possession.

86. Proceedings for foreclosure, sale or possession.

In cases within the scope of the statutory protection in connection with the performance of relevant service¹, a person is not generally entitled, except with the permission of the appropriate court², to institute³ proceedings for foreclosure or for sale in lieu of foreclosure⁴, or for the recovery of possession of mortgaged property⁵ or to take any step⁶ in any such proceedings instituted before the relevant date⁷.

1 As to the scope of this protection see para 81 ante. For the meaning of 'relevant service' see para 79 ante.

2 For the meaning of 'appropriate court' see para 81 note 3 ante. As to the procedure on applying for permission see para 85 note 11 ante.

3 For the exceptions see para 87 post.

4 This protection is probably not confined to cases in which the proceedings are in terms for foreclosure or for sale in lieu of foreclosure; the words mean that no person may institute any proceedings for the purpose of realising the security which will result in foreclosure or in the analogous benefit of sale, which in some cases takes the place of foreclosure: *Hosack v Robins* [1917] 1 Ch 332 at 338, CA, per Warrington LJ. In a claim by a debenture holder who does not claim foreclosure but the appointment of a receiver, the court may exercise its discretion in making the appointment, considering the nature of the case and the spirit of the statutory provisions, and if the claimant's security is not in jeopardy, may refuse to appoint a receiver: see *Gasson and Hallagan Ltd v Jell* [1940] Ch 248; *Re Newport Construction Co Ltd, Barclays Bank Ltd v Newport Construction Co Ltd* [1948] Ch 217, [1948] 1 All ER 365.

5 For these purposes, a mortgagee of land or any interest in land is not entitled to obtain possession of the mortgaged property unless default has been made in the payment of some mortgage money or there has been a breach by the mortgagor, or some person concurring in the making of the mortgage, of some mortgage obligation; and, for this purpose, default is not deemed to be made, except where the money is payable by instalments, unless three months have elapsed after a written demand for payment has been served on the person liable: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 6(5).

6 'Step' means an interim step prior to the setting down of the action for trial, and not the trial itself: *Moorgate Estates Ltd v Trower* [1940] Ch 206 at 215-216, [1940] 1 All ER 195 at 204-206 per Farwell J. It seems that a step taken by the defendant in the proceedings requires no permission, although this is not expressly stated in the legislation.

7 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2)(b). 'The relevant date' generally means the date on which the serviceman in question began to perform the period of relevant service (see s 3(10)); however, for these purposes and for the purposes of s 2(2) provisos (i), (ii) (see para 87 post), where that date was before 1 August 1951, 'the relevant date' means 1 August 1951, and where the protection applies by virtue of an application or proposed application by the person liable (ie by virtue of s 3(1)(c): see para 81 ante), 'the relevant date' means the date on which the protection provided by s 2 (as amended) began to apply: s 3(10) proviso (b).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(ii) Protection against Legal Remedies/87. Exceptions to the right to claim protection.

87. Exceptions to the right to claim protection.

The protection against extra-judicial remedies and proceedings for foreclosure, sale or possession¹ does not apply if the remedy, or the right to institute proceedings, is available to the person entitled in consequence of a default in the payment of a debt arising by virtue of a contract made after the relevant date, or the performance of an obligation arising after that date². The imposing of that protection does not affect:

- 15 (1) the power of sale of a mortgagee of land or an interest in land who is in possession³ at the relevant date⁴, or who before that date has appointed a receiver who at that date is either in possession or in receipt of rents and profits of the mortgaged property⁵;
- 16 (2) the power of sale of a mortgagee in possession of property other than land or an interest in land, where the power of sale has arisen, and notice of the intended sale has been given, before the relevant date⁶;
- 17 (3) the right or power of a pawnbroker to deal with a pledge⁷;
- 18 (4) any right or power of a person to sell goods which are in his custody as a bailee, being a right or power existing by reason of default in the payment of a debt⁸; or
- 19 (5) the institution or prosecution of proceedings for the appointment by the court of a receiver of any property⁹.

1 See paras 85-86 ante.

2 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 2(2) proviso. As to the meaning of 'relevant date' in the phrase 'contract made after the relevant date' see s 3(10) proviso (a); and para 83 note 8 ante. It seems that 'the relevant date' must bear the same meaning in the phrase 'performance of an obligation so arising' (ie arising after the relevant date).

3 In order to oust the right to protection, the mortgagee's or receiver's possession must be lawful (*Anchor Trust Co Ltd v Bell* [1926] Ch 805) but whether possession was taken adversely or not is immaterial (*Ziman v Komata Reefs Gold Mining Co Ltd* [1915] 2 KB 163, CA; *Foster v Barnard* [1916] 2 AC 154, HL). As to the limitation on the mortgagee's right to possession see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 6(5); and para 86 note 5 ante.

4 For the meaning of 'the relevant date' for the purposes of this provision see *ibid* s 3(10) proviso (b); and para 86 note 7 ante.

5 *Ibid* s 2(2) proviso (i).

6 *Ibid* s 2(2) proviso (ii).

7 *Ibid* s 2(2) proviso (iii). See also PLEDGES AND PAWNS vol 36(1) (2007 Reissue) para 27.

8 *Ibid* s 2(2) proviso (iv). See also BAILMENT.

9 *Ibid* s 2(2) proviso (v).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(iii) Making up Civil Remuneration/88. Additions to service pay.

(iii) Making up Civil Remuneration

88. Additions to service pay.

When a person occupied in any of certain capacities¹ has to cease his occupation in order to perform relevant service², there may³ be paid to him, or to or for the benefit of his wife⁴ or other dependants nominated by the serving person, a sum which must not exceed the civil remuneration⁵ of that person after deduction of service pay⁶. In the event of the death of any such person while performing relevant service⁷, this payment may continue to or for the benefit of his widow or other dependants for a period not exceeding 26 weeks, unless the widow is entitled to a pension⁸.

1 In any capacity specified in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46(1), Sch 2 Pts I, II (amended by the Police Act 1964 s 64(3), Sch 10 Pt I; the Courts Act 1971 s 56(4), Sch 11 Pt IV; the Superannuation Act 1972 s 29(1), Sch 6 para 33; the National Health Service Act 1977 s 129, Sch 15 para 12; the Education Act 1980 s 1(3), Sch 1 para 20; the New Towns Act 1981 s 35(3); the Statute Law (Repeals) Act 1989; the Health Authorities Act 1995 s 2(1), Sch 1 para 88; the Access to Justice Act 1999 ss 76(2), 106, Sch 7 para 6, Sch 10 para 20, Sch 15 Pt V, Table (1); the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II para 6; the National Health Service Reform and Health Care Professions Act 2002 ss 1(3), 2(5), Sch 1 Pt 2 para 36, Sch 2 Pt 2 para 39; and the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986, art 11, Schedule para 2). The capacities specified include coroners, local authority employees, members of a police force or fire brigade, probation officers and their clerks, teachers, officers of local health authorities, special health authorities and health boards (including dental practitioners at a health centre) and employees of a development corporation. In the cases of coroners, expenses incurred in connection with their civil occupations while serving in the forces must be recouped to them by the paying authority: see the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 48 (amended by the Courts Act 1971 s 56, Sch 11 Pt IV; and the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt II).

2 For these purposes, 'relevant service' means any relevant service (see para 79 ante) except service of a description specified in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 1 para 7 (see para 79 ante), performed under an obligation or voluntary arrangements under which its continuous duration is limited to 15 days or less: s 52(1) (amended by the Statute Law (Repeals) Act 1977).

3 No right to any such payment is conferred on any person.

4 In the case of a woman, 'his wife' must be taken to refer to her husband: see para 79 note 1 ante.

5 'Remuneration' means net salaries, wages and emoluments after deducting any expenses incurred in the payment of salaries or other sums to persons employed by the person concerned in connection with the duties in respect of which he received or would receive the remuneration and any office expenses in connection with those duties: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 52(3).

6 Ibid ss 46(1), (2), 52(2)(b). Where a person is occupied in several capacities, only the appropriate portion of his service pay is taken into account: s 46(2) proviso. 'Service pay' means pay for performing relevant service and includes marriage, family and other allowances: s 52(2)(a).

In *National Association of Local Government Officers v Bolton Corpn* [1943] AC 166, [1942] 2 All ER 425, HL, it was held that where an authority possessed a statutory power to make up the civil remuneration of its employees while they were undertaking service in the armed forces, and a dispute had arisen between the authority and a body representing its employees as to whether the authority should exercise that statutory power, that was a trade dispute within the meaning of the Industrial Courts Act 1919 and was capable of being referred to the National Arbitration Tribunal constituted under emergency legislation then in operation. Although that legislation, together with the Industrial Courts Act 1919, has been repealed, it is submitted that, having regard to the definition of 'trade dispute' contained in the Trade Union and Labour Relations (Consolidation) Act 1992 s 244(1) (cf the definition in the Industrial Courts Act 1919 s 8 (repealed)), such a dispute as was the subject of *National Association of Local Government Officers v Bolton Corpn* supra could now

be the subject of arbitration by the Advisory, Conciliation and Arbitration Service, or could be referred by that service (at the request of one or more of the parties to the dispute and with the consent of all of them) for settlement to the arbitration of one or more persons appointed by the service, or to the Central Arbitration Committee: see the Trade Union and Labour Relations (Consolidation) Act 1992; and EMPLOYMENT vol 40 (2009) PARA 846 et seq.

7 As to whether death occurred while performing relevant service see para 80 text and notes 8-14 ante.

8 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46(3). The reference in the text is to entitlement under the following statutory provisions: (1) regulations made under the Superannuation Act 1972 s 7 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 875) or s 10 (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 711); (2) any local Act scheme (see para 80 note 7 ante); (3) the Fire Services Act 1947 (see FIRE SERVICES); or (4) the Police Pensions Act 1976 (see POLICE vol 36(1) (2007 Reissue) para 407 et seq); Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46(3)(i)-(iv) (s 46(3)(i), (ii) substituted by the Superannuation Act 1972 s 29(1), Sch 6 para 30).

UPDATE

88 Additions to service pay

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--1951 Act Sch 2 Pt I further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 13; SI 2008/912.

1951 Act Sch 2 Pt II omitted: Courts Act 2003 Sch 8 para 93, Sch 10.

TEXT AND NOTES 6, 8--1951 Act s 46(2), (3) further amended: Civil Partnership Act 2004 Sch 26 para 25.

NOTE 6--1951 Act s 52(2)(a) amended: Civil Partnership Act 2004 Sch 26 para 26.

NOTE 8--1947 Act replaced by the Fire and Rescue Services Act 2004. Now, head (3) the Fire and Rescue Services Act 2004: 1951 Act s 46(3)(iii) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 12).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(iii) Making up Civil Remuneration/89. Determination of additional amount.

89. Determination of additional amount.

The amount of the addition to service pay to be paid¹ is determined by the appropriate specified authority; in some cases the determining authority is also the paying authority, while in others the paying authority is independent of the determining authority². If the two authorities are independent, then if the paying authority is aggrieved by the determination it may, unless the determining authority is the Secretary of State, appeal to him³. Where the power of making a payment is exercisable by several probation boards acting jointly and the committees cannot agree as to how the power should be exercised, the Secretary of State may determine the amount, if any, which must be paid⁴.

1 le under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46 (as amended): see para 88 ante.

2 See *ibid* s 47(1), (2), Sch 2 Pts I, II (as amended); and para 88 note 1 ante.

3 See *ibid* s 47(3). In certain cases, an authority distinct from the paying authority may exercise the right of appeal: see s 47(3) proviso, Sch 2 Pt II (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV; the Statute Law (Repeals) Act 1989; and the Access to Justice Act 1999 ss 76(2), 106, Sch 10 para 20, Sch 15 Pt V, Table (1)). As to the Secretary of State see para 2 ante.

4 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 49. See also Sch 2 Pt I paras 6, 7 (as substituted) which refer to probation boards established under the Criminal Justice and Court Services Act 2000 s 4: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(iii) Making up Civil Remuneration/90. Expenses.

90. Expenses.

Any enactment relating to the manner in which any expenses are to be paid or borne, or to the making of grants towards expenses, which would have applied as respects the civil remuneration of persons qualifying for additions to service pay under the statutory provisions¹, applies in like manner as respects payments made under those provisions².

¹ I.e. under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46 (as amended): see para 88 ante.

² Ibid s 50(1).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(iii) Making up Civil Remuneration/91. Source of additional amounts.

91. Source of additional amounts.

Any increase, attributable to the statutory provisions concerning the making up of civil remuneration¹, in any sums payable under any other enactment out of money provided by Parliament must be defrayed out of money so provided².

¹ The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46 (as amended): see para 88 ante.

² Ibid s 51.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (6) PROTECTION OF CIVIL INTERESTS/(iv) Reinstatement in Civil Employment/92. Right to reinstatement.

(iv) Reinstatement in Civil Employment

92. Right to reinstatement.

Where a member of the reserve forces¹ in permanent service under the Reserve Forces Act 1996² applies to his former employer³ to be taken into his employment, the former employer is obliged to employ the applicant, at the first opportunity, in the occupation which he previously held and on terms and conditions not less favourable than those which he previously enjoyed, or if this is not practicable, then in the most favourable occupation and on the most favourable terms and conditions as is reasonable and practicable⁴. Where an applicant has been taken into the employment of his former employer, the former employer is under an obligation to employ the applicant on the same basis as that described above for the following 26 weeks or for so much of that time as is reasonable and practicable⁵.

A person who claims that he has rights under the Reserve Forces (Safeguard of Employment) Act 1985 which are being denied him may apply to a Reinstatement Committee⁶.

Dismissal of a person solely or mainly by reason of any duties or liabilities which he is or may become liable to perform by reason of his being required to enter into whole-time service is unlawful⁷.

1 As to the reserve forces see paras 173 et seq, 223 et seq post.

2 In permanent service under: (1) the Reserve Forces Act 1996 Pt IV (ss 28-37) (as amended) (special agreements for call out: see para 245 post) or Pt V (ss 38-49) (as amended) (special members: see para 251 post); (2) a call out order under Pt VI (ss 50-64) (orders authorising general call out of members of reserve forces: see para 232 et seq post); or (3) a recall order under s 68 (recall of officers and former servicemen: see para 246 post): Reserve Forces (Safeguard of Employment) Act 1985 s 1(1) (substituted by the Reserve Forces Act 1996 s 122(2)). Such permanent service is 'whole-time service': Reserve Forces (Safeguard of Employment) Act 1985 s 1(1A) (added by the Reserve Forces Act 1996 s 122(2)).

3 'Former employer' means, in relation to a person who has entered on a period of whole-time service, the employer by whom he was last employed within the period of four weeks immediately preceding the beginning of his whole-time service: see the Reserve Forces (Safeguard of Employment) Act 1985 s 2, Sch 1. As to the procedure for application for reinstatement see ss 3, 4.

4 See *ibid* s 1(2), (3). The circumstances in which it will not be regarded as 'reasonable and practicable' for a former employer to reinstate are prescribed by s 5. As to waiver of rights see s 6.

5 See *ibid* s 7(1). See *Slaven v Thermo Engineers Ltd* [1992] ICR 295.

If, when the applicant last ceased to be employed by his former employer before the beginning of his whole-time service, he had been in the continuous employment of that employer for a consecutive period of not less than 52 weeks, then the Reserve Forces (Safeguard of Employment) Act 1985 s 7(1) has effect as if 52 weeks were substituted for 26 weeks; if he had been employed for less than 13 weeks, then 13 weeks is substituted: see s 7(2). Provision is made for circumstances in which there has been a change of undertaking: see s 7(3).

As to the extent of the employer's obligation regarding the date from which the period of obligation runs, and related questions, see *Jacobs v Portsmouth Aviation Ltd* [1949] RE Code 1/79. The employer's obligation is discharged if an applicant, having been taken into employment by his former employer, voluntarily terminates his employment before the period of employment specified by the Reserve Forces (Safeguard of Employment) Act 1985 s 7 has run out, the applicant then having no further claim: *O'Hare v Standard Motor Co Ltd* [1948] RE Code 1/69.

6 See the Reserve Forces (Safeguard of Employment) Act 1985 ss 8, 9, Schs 2, 3 (Sch 2 amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 59; and the Judicial Pensions and Retirement Act 1993

s 26, Sch 6 para 60). As to the enforcement of orders made by a Reinstatement Committee and summary recovery of sums ordered to be paid see ss 10-12. As to evidence see ss 14-16. The Secretary of State is empowered to make regulations regulating the procedure to be followed by Reinstatement Committees and for any other thing which is required or authorised to be prescribed: see s 19. As to the Secretary of State see para 2 ante. At the date at which this volume states the law no such regulations had been made.

7 See *ibid* s 17 (amended by the Reserve Forces Act 1996 s 122(3)). See *Downsborough v Huddersfield Industrial Society* [1941] 3 All ER 434 (employer terminated a person's employment on the ground that he registered as a conscientious objector; employment not terminated by reason of any duties or liabilities which that person was, or might become, liable to perform). Loss suffered by dismissal contrary to the Reserve Forces (Safeguard of Employment) Act 1985 s 17 (as amended) may be compensated by order made by the court (up to a maximum of the equivalent of five weeks' remuneration): see s 18.

UPDATE

92 Right to reinstatement

NOTE 6--1985 Act Sch 2 further amended: Constitutional Reform Act 2005 Sch 4 para 178; Tribunals, Courts and Enforcement Act 2007 Sch 10 para 16. See also 2005 Act ss 19, 85, Sch 7 para 4, Sch 14 Pt 3.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(i) In general/93. Prerogative rights of the Crown.

(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY

(i) In general

93. Prerogative rights of the Crown.

In time of war, invasion or other emergency, the Crown has a prerogative right to enter and carry out works on the land of any subject for the purposes of the defence of the realm without payment of compensation¹. The exact extent of these prerogative powers is, however, open to doubt², and in modern times special powers have been conferred on the Crown by statute and statutory regulations to take necessary action with regard to entry upon land, requisitioning and any other action demanded by an emergency³. If a statute grants to the Crown a right similar or identical to an alleged prerogative right, the Crown will enter upon the land pursuant to the statutory and not the prerogative right, and must therefore pay whatever compensation is laid down by the particular authorising statute⁴.

1 See eg *King's Prerogative in Saltpetre* (1606) 12 Co Rep 12 (entry to dig saltpetre); *Warren v Smith, Magdalen College Case* (1615) 1 Roll Rep 151 at 152 (entry to dig fortifications); *Re Petition of Right* [1915] 3 KB 649 at 659, CA, per Lord Cozens-Hardy MR; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 812, 820.

2 The decision in *Re Petition of Right* [1915] 3 KB 649, CA (cited in note 1 supra), was afterwards doubted, and the case was settled on the Crown's agreeing to pay compensation: see sub nom *Re X's Petition of Right* (1916) 32 TLR 699, HL. The decision was not followed in *Burmah Oil Co (Burmah Trading) Ltd v Lord Advocate* [1965] AC 75, [1964] 2 All ER 348, HL, which established a common law right in certain circumstances to compensation in respect of wartime destruction of property by the Crown. However, any such right has since been abolished by the War Damage Act 1965: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 379, 820; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 533.

3 See para 94 post.

4 *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 398, [1984] 3 All ER 935 at 941, HL, per Lord Fraser of Tullybelton.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(i) In general/94. Emergency statutory powers of the Crown.

94. Emergency statutory powers of the Crown.

Powers to requisition land and do works on land generally, subject to compensation, were conferred on the Crown during the wars of 1914-18¹ and 1939-45². Although many of these powers have since been terminated or allowed to lapse³, some have been replaced by permanent legislation⁴.

1 See eg the Defence of the Realm (Consolidation) Act 1914 s 1(1), (2) (repealed); the Defence of the Realm (Acquisition of Land) Act 1916; and the Defence of the Realm (Consolidation) Regulations 1914, SR & O 1914/1699 (revoked).

2 See eg the Emergency Powers (Defence) Act 1939 and the Emergency Powers (Defence) Act 1940 (both repealed) which, together with the defence regulations made under them, conferred requisitioning powers (inter alia). See also the Compensation (Defence) Act 1939.

3 See eg the Land Powers (Defence) Act 1958 s 1 (as amended). The requisitioning powers in relation to land and other property exercised during the 1939-45 war under the Defence (General) Regulations 1939, SR & O 1939/927, have now all been revoked or have expired.

4 See generally the Emergency Laws (Re-enactments and Repeals) Act 1964; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 507.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(ii) Use of Land for Manoeuvres and Training/A. MANOEUVRES/95. Power to make a manoeuvres order.

(ii) Use of Land for Manoeuvres and Training

A. MANOEUVRES

95. Power to make a manoeuvres order.

The Crown may by Order in Council¹, known as a 'manoeuvres order', authorise manoeuvres to be held within a specified area, known as the 'manoeuvres area'², for a specified period, known as the 'manoeuvres period', which must not exceed three months in duration or begin less than nine months after the date of the order³. No land may be included in a manoeuvres area more than once every five years except, where the land is in England or Wales, with the consent of the council of the county or county borough in which the land is situated, and, if the land is in the New Forest, the consent of the Verderers of the New Forest⁴.

1 The power to make an Order in Council is exercisable by statutory instrument: see the Statutory Instruments Act 1946 s 1(1); and STATUTES vol 44(1) (Reissue) para 1503.

2 The manoeuvres area must be defined in the Order in Council both by description and by reference to a map, with the definition by map prevailing in the case of any discrepancy: Manoeuvres Act 1958 s 1(1)(a).

3 Ibid s 1(1). The description and number of the formations of the armed forces which, at the time of publishing the notice of intention to make the order (see para 96 post), were intended to take part in the manoeuvres, must be indicated: s 1(1)(b). This requirement is without prejudice to the power of the Crown to authorise any persons to take part in the manoeuvres: s 1(1)(b).

4 Ibid s 1(2)(a). For this purpose, a manoeuvres order under which no manoeuvres are executed must be disregarded: s 1(2) proviso. As to the Verderers of the New Forest see FORESTRY vol 52 (2009) PARA 6.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(ii) Use of Land for Manoeuvres and Training/A. MANOEUVRES/96. Procedure for making manoeuvres order.

96. Procedure for making manoeuvres order.

Not less than two months before the date when a manoeuvres order¹ is to be made, a draft of the proposed order must be sent to each of certain authorities², and notice of the intention to make the order must be published in local newspapers³. A draft of the order must be laid before and approved by a resolution of each House of Parliament⁴. No recommendation may be made to the Crown to make the order unless all these requirements have been satisfied⁵.

1 As to the meaning of 'manoeuvres order' see para 95 ante.

2 Notice must be sent to: (1) the Environment Agency and to any local authority or parish or community council any part of whose area is included in the manoeuvres area; (2) if any part of the New Forest is so included, to the Verderers of the New Forest; and (3) except when the whole of the manoeuvres area is in Scotland, to the Countryside Agency: Manoeuvres Act 1958 s 1(3)(a)(i)-(iii) (amended by the Water Act 1989 s 190, Sch 25 para 24; the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1; and the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999, SI 1999/416, art 3). 'Local authority' means the council of a county, county borough or district: Manoeuvres Act 1958 s 9. As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 17. As to the Countryside Agency see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523. As to the Verderers of the New Forest see FORESTRY vol 52 (2009) PARA 6.

3 Ibid s 1(3)(a). The local newspapers must between them circulate in all local authority areas wholly or partly included in the manoeuvres area: s 1(3)(a).

4 Ibid s 1(3)(b).

5 Ibid s 1(3).

UPDATE

96 Procedure for making manoeuvres order

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--1958 Act s 1(3)(a)(ii) further amended: Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 26.

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97. Manoeuvres commission and its powers.

Whenever a manoeuvres order¹ is made, a manoeuvres commission must be formed, consisting of 12 persons comprising a chairman appointed by the Lord Chancellor and 11 members². A manoeuvres commission has power to issue such directions, imposing requirements on the authorised forces³ or any occupier of land comprised within the manoeuvres area⁴ or any land in the vicinity of that land, as it considers necessary or expedient for the purpose of avoiding damage or disturbance in consequence of the execution of the authorised manoeuvres beyond what is necessary for them to be effectively carried out⁵. These directions may preclude or restrict the entry of the authorised forces on any specified land, or the use of any such land or the use of any specified source of water within the manoeuvres area⁶. The officer directing the manoeuvres is under a duty to issue such instructions to the authorised forces as, in his opinion, will secure compliance with any such requirements⁷. If in consequence of an occupier refusing or failing without reasonable cause to comply with the requirements of any such directions any of his livestock is injured or other property of his is damaged, he is not entitled to any compensation⁸ in respect of that injury or damage⁹.

1 As to the meaning of 'manoeuvres order' see para 95 ante.

2 Manoeuvres Act 1958 s 4(1)(a). As to the appointment of the members see s 4(1)(b)-(e); and as to the payment of members see s 4(6). As to the voting procedure of the commissions see s 4(5). A commission may act by three of its members: s 4(4). Where part of the manoeuvres area is in Scotland, two such commissions must be formed: see s 4(3). As to the powers of the independent commissions when two are formed see s 5(5).

3 'Authorised forces' means persons taking part, with Her Majesty's authority, in the manoeuvres authorised by a manoeuvres order: *ibid* ss 2(1), 9.

4 As to the meaning of 'manoeuvres area' see para 95 ante.

5 Manoeuvres Act 1958 s 5(1), (2).

6 *Ibid* s 5(3).

7 *Ibid* s 5(3).

8 *Ie* under *ibid* s 7: see para 108 post.

9 *Ibid* s 5(4).

UPDATE

97 Manoeuvres commission and its powers

NOTE 2--1958 Act s 4(1)(b)-(e) amended: Natural Environment and Rural Communities Act 2006 Sch 11 Pt 1 para 26.

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98. Procedure for the issue of directions.

Before issuing any directions, a manoeuvres commission¹ must consult the Secretary of State² and such other authorities or organisations as it thinks appropriate, and must send to every local authority³ any part of whose area is comprised within the manoeuvres area⁴ a draft of the directions and a copy of the manoeuvres order, together with a notification of the time within which, and the manner in which, representation may be made regarding the draft directions⁵. Each such local authority must then make these documents available for public inspection for at least two weeks⁶. The commission must hold a public inquiry into any representations made⁷, and is required to alter the draft directions as it thinks fit having regard to the representations and to the results of the inquiry⁸. The draft directions as so altered must be submitted at least four months before the beginning of the manoeuvres period⁹ to the Secretary of State¹⁰, who may, by notice in writing at least three months before the beginning of the manoeuvres period, require the commission to delete or modify any direction which restricts or prohibits the entry on land or use of water which he is satisfied would frustrate all or some of the purposes of the manoeuvres order¹¹. If the Secretary of State determines that no variation is required, he must notify the commission accordingly as soon as may be¹².

As soon as may be after the receipt of a notice from the Secretary of State giving his determination as to the draft directions, the commission must issue them in the form of the draft, with any variation required by him, and any such variation must be indicated¹³. If by the date falling three months before the beginning of the manoeuvres period no notification from the Secretary of State has been received, the directions must be issued as soon as may be in the form in which they were submitted¹⁴. On the issue of the directions, the commission must publish them in such manner as it considers most suitable for giving notice of them to all persons likely to be affected¹⁵.

1 As to manoeuvres commissions see para 97 ante.

2 As to the Secretary of State see para 2 ante.

3 For the meaning of 'local authority' see para 96 note 2 ante.

4 As to the meaning of 'manoeuvres area' see para 95 ante.

5 Manoeuvres Act 1958 s 6(1). The time allowed for the making of representations must not be less than 21 days: s 6(1). For the requirements when part of the manoeuvres area is in Scotland see s 6(9).

6 Ibid s 6(2). During each week of the period when the documents are available for inspection the authority must publish notices to that effect in one or more local newspapers: s 6(2).

7 Ibid s 6(3). There must be at least 14 days' notice of such an inquiry by advertisement in the appropriate local newspapers: s 6(3).

8 Ibid s 6(3).

9 As to the meaning of 'manoeuvres period' see para 95 ante.

10 Manoeuvres Act 1958 s 6(4).

11 Ibid s 6(5). A copy of such a notice must be laid before each House of Parliament: s 6(5). Any variation required must be the minimum necessary to avoid the frustration of any of the purposes of the order: s 6(5) proviso.

12 Ibid s 6(6).

13 Ibid s 6(7).

14 Ibid s 6(7).

15 Ibid s 6(8).

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99. Power of authorised forces with a manoeuvres order.

Within the manoeuvres area¹, and during the manoeuvres period², any authorised forces³ may, under the directions of the Secretary of State⁴, and subject to those of the manoeuvres commission⁵, pass over, encamp, construct temporary works and execute defence manoeuvres on any land, provided that they do not enter upon or interfere with certain types of land or premises⁶. They may supply themselves with water from any source, and for that purpose may dam up any running water⁷; but they may not dam up water in such a manner as to interfere with the carrying on of any trade or industry, or take water from any source of supply belonging to a private owner or public authority in such quantities as to reduce the water available to the persons entitled to use that source below what is shown to be required by them⁸.

1 As to the meaning of 'manoeuvres area' see para 95 ante.

2 As to the meaning of 'manoeuvres period' see para 95 ante.

3 For the meaning of 'authorised forces' see para 97 note 3 ante.

4 As to the Secretary of State see para 2 ante.

5 As to the manoeuvres commissions see para 97 ante.

6 Manoeuvres Act 1958 s 2(1)(a), (2). The land and premises referred to include dwelling houses, places of worship, burial grounds, schools, factories and business premises and farmyards and gardens: see s 2(2)(a)-(e). Exclusion from such land and premises does not restrict the use by authorised forces of any highway or park: s 2(2) proviso. Nothing in the Manoeuvres Act 1958 is to affect prejudicially any public right or any right of common, but this is always subject to the power temporarily to close roads (see para 101 post) and to punish offences connected with being within the manoeuvres area (see para 109 post): s 2(4).

7 Ibid s 2(1)(b).

8 Ibid s 2(1)(b) proviso.

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100. Obligations of authorised forces.

The officer directing the manoeuvres is under an obligation to take care that there is no interference with remains of antiquarian or historical interest, or with any picturesque or valuable timber or other natural features of exceptional interest or beauty¹. He is empowered to prevent trespass or damage to property by persons not belonging to the authorised forces² and is responsible for restoring all land used for manoeuvres as soon and as far as is practicable to its previous condition³.

Compensation is payable for any damage to persons or property, or any interference with rights or privileges, arising from the exercise of powers authorised by a manoeuvres order⁴.

1 Manoeuvres Act 1958 s 2(3).

2 For the meaning of 'authorised forces' see para 97 note 3 ante.

3 Manoeuvres Act 1958 s 2(3).

4 See *ibid* s 7; and para 108 post.

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101. Suspension of rights of way.

Any right of way over a highway or part of a highway within the manoeuvres area¹ may be suspended for a certain period, subject to any conditions required for the protection of individuals or the public².

1 As to the meaning of 'manoeuvres area' see para 95 ante.

2 See the Manoeuvres Act 1958 s 3; and HIGHWAYS, STREETS AND BRIDGES.

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B. TRAINING

102. Occasional use of land for training.

A Secretary of State¹ may by order² direct that specified land³ may for a period of 12 months be subject to occasional use⁴ for the encampment⁵ of persons in transit to or from a training area⁶, the carrying out of signalling⁷ or cliff assault⁸ exercises, or as a means of access to other land used for one of these purposes⁹.

1 As to the Secretary of State see para 2 ante.

2 Any power conferred by the Land Powers (Defence) Act 1958 to make regulations is exercisable by statutory instrument and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 24(1). The Secretary of State may vary or revoke any order which he has made: s 24(2).

3 Except where the context otherwise requires, 'land' includes land covered by water: *ibid* s 25(1).

4 The use may not be for more than a continuous period of 72 hours: *ibid* s 6(3). There must be an interval of at least 21 days between each such period, and the land may not be subject to such a use more than six times during the specified 12 months: s 6(3). Fourteen days' notice of the intention to enter on the land must be given: s 6(3).

5 'Encampment' includes operations incidental to encampment (including the taking of water for use by persons or animals or in mechanically-propelled vehicles) and the carrying out of training exercises in the defence of the camp and operations incidental to such exercises: *ibid* s 6(6).

6 'Training area' means any area for the time being available for use for the training of Her Majesty's forces: *ibid* s 6(6).

7 'Signalling exercises' includes operations incidental to such exercises, including the erection of poles and the laying of wires and cables on or over land: *ibid* s 6(6).

8 This type of exercise may be carried out only on land consisting of or including cliffs on the seashore: *ibid* s 6(1)(c).

9 *Ibid* s 6(1). There must not be two such orders operative over the same land at the same time (s 6(1) proviso), nor may any powers be exercisable under an order while the land is subject to a manoeuvres order (s 6(3)). As to manoeuvres orders see para 95 et seq ante.

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103. Procedure for making a training order.

Prior to the making of a training order¹ the Secretary of State² must make a draft order describing by reference to a map the land to which it applies, and must serve notice³ of the intention to make such an order on every owner, lessee or occupier⁴ of any land to which the order is to apply⁵, specifying the time within which⁶ and the manner in which objections to the order may be made⁷. A copy of the draft order and of the map must either accompany that notice or be made available for inspection at a place reasonably near to, and accessible from, the land in question⁸. If the draft order and map are not sent with the notice, the effect of the order must be stated, and the place for inspection of the copies must be named, in the notice⁹. If no objections are duly made by any such owner, lessee or occupier, or if made are withdrawn, the Secretary of State may make the order¹⁰. If, however, any objection, not relating exclusively to compensation¹¹, is duly made, the objector must be given an opportunity to appear before, and be heard by, a person appointed by the Lord Chancellor to hold an inquiry¹² into the proposal to make an order¹³. The Secretary of State must consider the report of the inquiry and the objection, and may then make the order¹⁴.

The Secretary of State may not make a training order with any modification from the draft order unless either:

- 20 (1) every owner, lessee or occupier whose land is affected by the modification has been served with notice of it, and has consented, or not objected in writing to it, within 14 days of receiving the notice¹⁵; or
- 21 (2) the modification arises from representations made at an inquiry into the proposal to make an order, following an objection duly made to that proposal, or from the findings and recommendations of the person holding that inquiry, and every such owner, lessee, or occupier as previously mentioned was served with notice of that proposal and had an opportunity to be heard at that inquiry¹⁶.

1 le an order under the Land Powers (Defence) Act 1958 s 6(1): see para 102 ante.

2 As to the Secretary of State see para 2 ante.

3 For the general provisions as to service see the Land Powers (Defence) Act 1958 s 23. Service by post is not effective unless the registered post or the recorded delivery service is used: s 23(1); Recorded Delivery Service Act 1962 s 1(1).

4 le except monthly tenants or tenants for any lesser period: Land Powers (Defence) Act 1958 s 6(1), Sch 2 para 2(1). 'Occupier', in relation to land which is not occupied, means the person for the time being entitled to possession of that land: s 25(1). It includes a statutory tenant under the Rent Acts: see *Brown v Ministry of Housing and Local Government* [1953] 2 All ER 1385, [1953] 1 WLR 1370. Where the land is ecclesiastical property, a notice must be served on the Church Commissioners: Land Powers (Defence) Act 1958 Sch 2 para 2(2). 'Ecclesiastical property' means land (not being land in Scotland, Northern Ireland, Wales or Monmouthshire) belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction: Sch 2 para 2(2). As to the Church Commissioners see ECCLESIASTICAL LAW vol 14 paras 361-383.

5 If the Secretary of State is satisfied that it is not practicable, reasonable inquiries having been made, to ascertain the existence or the name and address of any owner, lessee or occupier of the land, the notice will be deemed to have been duly served if it is addressed generally to all such persons as may be appropriate, describing the land, and is delivered to some responsible person on the land, or, if there is no such person, is fixed to some conspicuous object on the land: *ibid* s 23(4).

- 6 The time must be not less than 21 days from the service of the notice: *ibid* Sch 2 para 2(1)(c).
- 7 *Ibid* Sch 2 para 2(1)(c).
- 8 *Ibid* Sch 2 para 2(1)(a), (b).
- 9 *Ibid* Sch 2 para 2(1)(a), (b).
- 10 *Ibid* Sch 2 para 3. As to questioning the validity of the order see para 105 post.
- 11 The Secretary of State may require any objector to state in writing the grounds of his objection, and (for the purposes of his duties relating to the making of training orders and the holding of inquiries into objections) the Secretary of State may disregard any objection which he is satisfied relates exclusively to compensation: *ibid* Sch 2 para 5. As to compensation and disputes concerned with it see para 108 post.
- 12 The inquiry need not be held in public: *ibid* Sch 2 para 4(1) proviso.
- 13 *Ibid* Sch 2 para 4(1). Under Sch 2 para 4(3), the Lord Chancellor has made rules of procedure as to such inquiries, prescribing (*inter alia*) the duty of the Secretary of State to inform the objector of his reasons for proposing to make the order, the obligations of the person holding the inquiry, and the duties of the Secretary of State with respect to consideration of the findings and recommendations of the person holding the inquiry, and the furnishing to the objector of the reasons for any departure from those recommendations: see the Land Powers (Defence) Act (Inquiries) Rules 1958, SI 1958/2231.
- 14 Land Powers (Defence) Act 1958 Sch 2 para 4(2).
- 15 *Ibid* Sch 2 para 6(a).
- 16 *Ibid* Sch 2 para 6(b).

UPDATE

103 Procedure for making a training order

TEXT AND NOTES--Land Powers (Defence) Act 1958 Sch 2 further amended and repealed in part: Constitutional Reform Act 2005 Sch 4 paras 45-48, Sch 18. See also 2005 Act s 19, Sch 7 para 4.

TEXT AND NOTE 4--Now, the notice must be served on every person who is an owner, lessee, tenant or occupier of any land to which the order applies (1) to whom the minister would, if proceeding under the Compulsory Purchase Act 1965 s 5(1), be required to give a notice to treat; or (2) who the minister thinks is likely to be entitled to make a claim for compensation under s 10 if the order is confirmed and the compulsory purchase takes place, so far as he is known to the minister after making a diligent inquiry: 1958 Act Sch 2 para 2(1)(a), (b) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519).

NOTE 4--1958 Act Sch 2 para 2(2) amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 5.

NOTES 6, 7--1958 Act Sch 2 para 2(1)(a), (b) now Sch 2 para 2(1A)(a)-(c) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519).

TEXT AND NOTE 10--Now, the objections referred to are with reference to the persons mentioned in the 1958 Act Sch 2 para 2(1)(b) (as amended: see TEXT AND NOTE 4): Sch 2 para 2(3) (amended by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519).

NOTE 13--SI 1958/2231 amended: Constitutional Reform Act 2005 Sch 4 para 50.

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104. Service of copies of the order.

When a training order¹ has been made, a copy must be served on every owner, lessee or occupier² of land to which the order applies, and on any other person on whom notice of the proposal to make the order was served, together with the appropriate map or a notice naming a place reasonably near to and accessible from the land to which the order applies where such a map may be inspected³.

1 le an order under the Land Powers (Defence) Act 1958 s 6(1) (as amended): see para 102 ante.

2 As to service on lessees and occupiers see para 103 notes 4-5 ante.

3 Land Powers (Defence) Act 1958 s 6(1), Sch 2 para 7.

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105. Method of questioning validity of training order; date of operation.

The validity of a training order¹ may be questioned only by a person aggrieved² by it, and who is required to be served with a copy of it³, on the ground that the making of the order or the inclusion of any provision in it was not authorised by statute⁴, or that the statutory requirements⁵ have not been complied with⁶. Within six weeks of the service of the copy of the order, the objector may apply⁷ to the High Court, which may suspend the order or provision in question (either generally or in so far as it affects any part of the property of the applicant) until the final determination of proceedings, and may quash the order wholly or in part if satisfied that either the making of it or any provision in it was not authorised by statute, or that the interests of the applicant have been substantially prejudiced by failure to comply with the statutory requirements⁸.

Subject to the provisions described above for questioning validity, the order may not be questioned in any legal proceedings whatsoever, either before or after it has been made⁹, and it becomes operative as soon as it is made¹⁰.

1 le an order under the Land Powers (Defence) Act 1958 s 6(1) (as amended): see para 102 ante.

2 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW. In the present instance, the terms of *ibid* s 6(1), Sch 2 Pt I paras 2(1), 4, 6, 8, read together, appear to show that a person aggrieved is someone who, having exercised his rights to object to the proposal of the Secretary of State to make a training order and to be heard at an inquiry under Sch 2 para 4(1) (see para 103 ante), then desires to question the validity of the order or of any of its provisions on one of the grounds mentioned in Sch 2 para 8 (see the text to note 6 infra). As to the Secretary of State see para 2 ante.

3 As to the persons on whom a copy of the order must be served see para 104 ante.

4 le by the Land Powers (Defence) Act 1958 s 6 (as amended): see para 102 ante.

5 le the requirements contained in *ibid* Sch 2 paras 2-7, including the requirements of any rules made under Sch 2 para 4(3): see paras 103-104 ante.

6 *Ibid* Sch 2 para 8.

7 As to the procedure on such an application see CIVIL PROCEDURE.

8 Land Powers (Defence) Act 1958 Sch 2 para 8. The court is not concerned with the wisdom of the making of the order: see *Re Beck and Pollitzer's Application*, *Re The Requisitioned Land and War Works Act 1945* [1948] 2 KB 339 at 344-345 per Croom-Johnson J (decided on the similar wording of an earlier Act).

9 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 21.

10 Land Powers (Defence) Act 1958 Sch 2 para 9. Whether the words of Sch 2 para 9 are sufficient to prevent a successful application for a quashing order (previously called an order of certiorari: see JUDICIAL REVIEW vol 61 (2010) PARAS 687, 693 et seq) has not yet been judicially decided. In *R v Medical Appeal Tribunal, ex p Gilmore* [1957] 1 QB 574, sub nom *Re Gilmore's Application* [1957] 1 All ER 796, CA, where certiorari was granted to quash the tribunal's decision for an admitted error apparent on the record (even though the relevant enactment provided that the tribunal's decision should be 'final'), it was held that certiorari is a remedy never to be taken away except by clear and explicit words, such as 'without recourse to certiorari'. See also *Re Waldron* [1986] QB 824 at 845, CA, per Ackner LJ. In the present instance the statutory words seem clear and explicit, but against that it could be argued that if want of jurisdiction were alleged it would not be the training order which was the subject of complaint but the jurisdiction to make it. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 612; JUDICIAL REVIEW vol 61 (2010) PARA 616. It should be noted that the provisions of the Tribunals

and Inquiries Act 1992 s 12 do not affect the Land Powers (Defence) Act 1958 Sch 2 para 9 because Sch 2 para 9 provides a right of application to the High Court within a limited time: see the Tribunals and Inquiries Act 1992 s 12(3); and JUDICIAL REVIEW vol 61 (2010) PARA 616.

UPDATE

105 Method of questioning validity of training order; date of operation

TEXT AND NOTES--Land Powers (Defence) Act 1958 Sch 2 further amended and repealed in part: Constitutional Reform Act 2005 Sch 4 paras 45-48, Sch 18; Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 5.

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106. Powers granted by the order.

Subject to the requirements as to notice¹, when a training order² is in force in respect of any land, any persons authorised by the Secretary of State³ may, for the purposes specified in the order⁴, enter upon the land, with or without equipment⁵, and make use of the land and carry out any work on, over or beneath its surface⁶. At any time before or during the period specified in the order, such persons may display notices on the land and make other preparations on it for forthcoming exercises or operations⁷. However, nothing in these provisions authorises any person to enter upon certain excepted land or premises⁸ or to injure or deface monuments of a specified class⁹.

1 See para 107 post.

2 Ie an order under the Land Powers (Defence) Act 1958 s 6(1) (as amended): see para 102 ante.

3 As to the Secretary of State see para 2 ante.

4 Ie any of the purposes specified in the Land Powers (Defence) Act 1958 s 6(1) (as amended), which are included in the training order: see para 102 ante.

5 'Equipment' (without prejudice to the generality of that expression) includes weapons, vehicles, aircraft and animals: *ibid* s 6(6).

6 *Ibid* s 6(2)(a).

7 *Ibid* s 6(2)(b).

8 *Ibid* s 6(4)(a) (amended by the Manoeuvres Act 1958 s 2(5)). The excepted land and premises are those exempted from the operation of a manoeuvres order by virtue of the Manoeuvres Act 1958 s 2(2): see para 99 note 6 ante.

9 Land Powers (Defence) Act 1958 s 6(4)(b) (amended by the Ancient Monuments and Archaeological Areas Act 1979 s 64(2), Sch 4 para 5, Sch 5). The monuments referred to are those included in the schedule compiled and maintained under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (as amended): see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010.

UPDATE

106 Powers granted by the order

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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107. Limitation on exercise of powers granted by the order.

No powers conferred by a training order¹ may be exercised unless, at least 14 days before entry is to be made on any land in pursuance of the order, notice is given² to every occupier of that land or any part of it, specifying the period during which the powers are to be exercisable³.

1 I.e. an order under the Land Powers (Defence) Act 1958 s 6(1) (as amended): see para 102 ante. As to the powers conferred see para 106 ante.

2 It is questionable whether the general provisions relating to the service of documents under the Land Powers (Defence) Act 1958 (see s 23; and para 103 notes 3, 5 ante) apply to this type of notice because of the terminology which in this instance requires notice to be 'given' and not 'served', and does not indicate that this notice is required to be documentary.

3 Ibid s 6(3). As to the periods when the land may be used within the 12 months specified in the order see para 102 note 4 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(ii) Use of Land for Manoeuvres and Training/C. COMPENSATION AND OFFENCES/108. Compensation.

C. COMPENSATION AND OFFENCES

108. Compensation.

Where either a manoeuvres order¹ or an order subjecting land to occasional use for training purposes² has been made, full compensation is payable out of money provided by Parliament³ for any damage to person or property, or any interference with rights or privileges arising from the exercise of powers authorised by such an order, whether or not occasioned by the acts or defaults of the forces or persons authorised, and including compensation in respect of any expenses reasonably incurred in protecting person, property, rights and privileges and in respect of any damage by reason of excessive weight of extraordinary traffic caused to any highway for the repair of which any public body or individual is responsible⁴.

The manoeuvres commission or (in the case of a training area) the Secretary of State⁵ may make regulations as to the procedure for making and determining claims for compensation, for limiting the time within which claims must be made, and for regulating the mode in which compensation is to be paid⁶. If any such claim is not settled by agreement, the difference must be referred to arbitration⁷.

1 Ie an order made under the Manoeuvres Act 1958 s 1 (as amended): see para 95 ante.

2 Ie an order made under the Land Powers (Defence) Act 1958 s 6 (as amended): see para 102 ante.

3 See also *ibid* s 26(1).

4 See *ibid* s 6(5); Manoeuvres Act 1958 s 7(1). The Land Powers (Defence) Act 1958 s 6(5) applies, with modifications, for the purposes of s 6 (as amended), the provisions of the Military Manoeuvres Act 1897 ss 6(1), (3), (4), 7, relating to compensation and penalties for obstruction. Those applied provisions have been repealed and are replaced by the Manoeuvres Act 1958 ss 7, 8 (as amended), and the references to the repealed enactments are accordingly to be construed as references to those replacing them: Interpretation Act 1978 s 17(2)(a). In the case of a manoeuvres order, the right to compensation may be lost by an occupier whose livestock or other property sustains injury or damage as a result of his non-compliance with the directions of a manoeuvres commission: see the Manoeuvres Act 1958 s 5(4); and para 97 ante. As to the manoeuvres commissions see para 97 ante. As to remedies for damages caused by extraordinary traffic see generally HIGHWAYS, STREETS AND BRIDGES.

5 As to the Secretary of State see para 2 ante.

6 Land Powers (Defence) Act 1958 s 6(5); Manoeuvres Act 1958 s 7(3). See also note 4 *supra*. Regulations under the Land Powers (Defence) Act 1958 must be made by statutory instrument, which is subject to annulment by a resolution of either House of Parliament: s 24(1). The regulation-making provisions in both the Land Powers (Defence) Act 1958 and the Manoeuvres Act 1958 expressly authorise the making of regulations after a particular manoeuvres order or training order has been made, but the Compensation (Occasional Use of Land for Defence Training Purposes) (War Office) Regulations 1959, SI 1959/1289, which are expressed as being made in exercise of the powers conferred by the provisions of the Land Powers (Defence) Act 1958 and the Manoeuvres Act 1958, and 'of all other powers' enabling the Secretary of State to make them, are of general application so far as claims for compensation arising out of a training order are concerned. Under these regulations, where a training order has been made by the Secretary of State, notification that a claim is to be made must be served on him as soon as practicable after, and a statement of claim containing specified particulars must be made within 12 months of, the incident giving rise to the claim. No other regulations under these powers of a general nature had been made at the date at which this volume states the law. In the case of a manoeuvres order, the manoeuvres commission must, with Treasury concurrence, appoint one or more compensation officers to determine as speedily as possible any such claim and settle the amount payable: Manoeuvres Act 1958 s 7(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

7 Land Powers (Defence) Act 1958 s 6(5); Manoeuvres Act 1958 s 7(4). See also note 4 supra. As to arbitrations generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

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109. Offences.

It is an offence for any person within a manoeuvres or training area during a manoeuvres or training period¹ unlawfully and wilfully to obstruct or interfere with the execution of the manoeuvres or the exercise of any rights conferred by virtue of the training order, or, without due authority, to enter or remain in any camp². It is also an offence, within such areas and during such periods, to move, without due authority, any flag or other mark distinguishing any land for the purpose of manoeuvres or of any rights conferred by virtue of the training order, or to erect or display any notice or mark representing or implying that the use of land or a source of water within such areas is not authorised, other than a note or mark indicating a restriction imposed by statutory authority³.

1 As to manoeuvres areas and periods see para 95 ante. As to the areas and periods specified in a training order see para 102 ante.

2 Land Powers (Defence) Act 1958 s 6(5); Manoeuvres Act 1958 s 8(1). See also para 108 note 4 ante. Such an offence is punishable on summary conviction by a fine not exceeding level 1 on the standard scale, and a person offending, together with any animal, vehicle or other property under his charge, may be removed by any constable or by, or by order of, any commissioned officer of the authorised forces or any person authorised under the Land Powers (Defence) Act 1958 s 6(2): s 6(5); Manoeuvres Act 1958 s 8(1) (amended by virtue of the Criminal Law Act 1977 s 31(5), (6), (9); and the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see para 40 note 4 ante. For the meaning of 'authorised forces' see para 97 note 3 ante.

3 Land Powers (Defence) Act 1958 s 6(5); Manoeuvres Act 1958 s 8(2) (amended by the Criminal Damage Act 1971 s 11(8), Schedule Pt II). Such an offence is punishable on summary conviction by a fine not exceeding level 1 on the standard scale: Land Powers (Defence) Act 1958 s 6(5); Manoeuvres Act 1958 s 8(2) (amended by virtue of the Criminal Law Act 1977 s 31(5), (6), (9); and the Criminal Justice Act 1982 ss 37, 46).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(iii) Prevention of Interference with Airfields or Apparatus/110. Orders to prevent obstruction or interference with operation.

(iii) Prevention of Interference with Airfields or Apparatus

110. Orders to prevent obstruction or interference with operation.

Where any land is, or is to be, used by a Secretary of State¹ for defence purposes² as an airfield or for the operation of any electrical apparatus for affording navigational aid to aircraft or for communicating with, guiding or locating aircraft or missiles, and it appears to him that an object³ situated within two miles of the boundary of the airfield or of any part of the apparatus is likely to cause interference⁴ with the safe and efficient use of the airfield for defence purposes or with the efficient operation of the apparatus, he may by order⁵ require the occupier of any land⁶ on which the object is situated to take specified action⁷ to prevent any such interference⁸.

1 As to the Secretary of State see para 2 ante.

2 'Defence purposes' includes: (1) any purpose of any of Her Majesty's naval, military or air forces; (2) the service of any visiting force within the meaning of the Visiting Forces Act 1952 Pt I (ss 1-12) (as amended) (see para 140 post) (including any headquarters as defined by the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736: see paras 142, 150 post); and (3) any purpose of the Secretary of State connected with the service of any of those forces: Land Powers (Defence) Act 1958 s 25(1).

3 In relation to both airfields and electrical apparatus an interfering object may be a tree, hedge, fence, pole, mast, cable, wire, wall (not being part of a roofed structure) or movable structure: *ibid* ss 10(2), 11(2)(a). In relation to electrical apparatus only, such objects may also be movable objects made wholly or mainly of metal, or parts of buildings or structures being parts made wholly or mainly of metal which without appreciably affecting the subsequent use of the building or structure in question can be either removed or replaced by parts made of other materials: s 11(2)(b), (c).

4 The tendency of the object to cause interference must be due to its position or height, or (in relation to its effect upon electrical apparatus only) its materials: *ibid* ss 10(1), 11(1).

5 The procedure for making such orders is the same as for training orders (see *ibid* s 6(1), Sch 2 paras 1-11 (as amended); and para 103 ante): ss 10(1), 11(1).

6 For the meaning of 'occupier' see para 103 note 4 ante.

7 In relation to both airfields and electrical apparatus, the action required may be to remove or re-site the object or to reduce its height; in relation to electrical apparatus only, the action may further include the replacement of the object (ie by one constructed of different materials): Land Powers (Defence) Act 1958 ss 10(1), 11(1). The time limit imposed by the order for carrying out the action required must not be less than 21 days from the date when notice of the making of the order is served on the occupier: ss 10(1), 11(1). For provisions as to service see s 23; and para 103 ante.

8 *Ibid* ss 10(1), 11(1) (both amended by the Ministry of Aviation Supply (Dissolution) Order 1971, SI 1971/719, art 3(2), Schedule para 5). Where the order directs the removal of a tree, the occupier of agricultural land other than woodlands may object if the stump is to remain and if, there having been an objection, an inquiry into the proposal is undertaken, and the person conducting the inquiry reports to the Secretary of State that it is desirable in the interests of good husbandry and reasonable in all the circumstances to remove the stump, then it must be removed: Land Powers (Defence) Act 1958 ss 10(4), 11(3). As to the requirement for an inquiry see note 5 supra; and para 103 ante. The lopping, cutting or removal of trees or hedges must be carried out in a woodmanlike manner so as to cause as little damage as possible to other trees or hedges and to fences and growing crops: ss 10(4), 11(3). For powers of entry to survey the land in connection with, *inter alia*, the performance of these powers to prevent interference with airfields see para 114 post.

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111. Power to enforce orders.

If the occupier¹ of land on which an interfering object stands does not take the action specified in an order to prevent interference² within the time specified³, the Secretary of State⁴ who made the order may take the action specified in the order, and for that purpose any person authorised by him may enter upon any land upon which the occupier may enter⁵.

1 For the meaning of 'occupier' see para 103 note 4 ante.

2 I.e. an order under the Land Powers (Defence) Act 1958 s 10(1) (as amended) or s 11(1) (as amended): see para 110 ante.

3 As to the time limit see para 110 note 7 ante.

4 As to the Secretary of State see para 2 ante.

5 Land Powers (Defence) Act 1958 ss 10(3), 11(3). A person entering upon land by virtue of this authority must produce written evidence of it if required to do so, and may only demand admission as of right after seven days' notice in writing of the intended entry has been given to the occupier: ss 10(3), 11(3), Sch 4 para 1. Wilful obstruction of a person acting in the exercise of these powers is an offence punishable on summary conviction by a fine not exceeding level 1 on the standard scale: Sch 4 para 2 (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see para 40 note 4 ante.

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112. Exemption from liability for action taken to enforce orders.

Any person acting under an order to prevent interference with an airfield or electrical apparatus¹ is exempted from any liability imposed by any enactment, covenant or agreement prohibiting or restricting the taking of that action², but the person who would but for this exemption have had a remedy is entitled to compensation³ in respect of its loss⁴.

1 le an order under the Land Powers (Defence) Act 1958 s 10(1) (as amended) or s 11(1) (as amended): see para 110 ante.

2 Ibid ss 10(7), 11(3).

3 As to compensation see para 113 post.

4 See the Land Powers (Defence) Act 1958 ss 10(5), 11(3). For examples of such restrictions see FORESTRY vol 52 (2009) PARAS 116-119 (forestry dedication covenants, entered into with the Forestry Commissioners in consideration of financial assistance from them); FORESTRY vol 52 (2009) PARA 120 (restrictions on felling trees without a licence from the Forestry Commissioners).

UPDATE

112 Exemption from liability for action taken to enforce orders

NOTE 4--Land Powers (Defence) Act 1958 s 10(5) amended: see PARA 113.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(iii) Prevention of Interference with Airfields or Apparatus/113. Compensation.

113. Compensation.

The occupier¹ of land to whom an order to prevent interference with an airfield or electrical apparatus² is directed is entitled to compensation, from the Secretary of State³ who made the order, in respect of expenses reasonably incurred in complying with the order or in selling or otherwise disposing of materials to which he was not entitled⁴, and any person is entitled to compensation for any loss suffered by reason of damage to any land or chattels, or for disturbance⁵ in their enjoyment, as a consequence of the taking of any action required by the order⁶. If any depreciation in value of any interest in the land which comprises, or is held with, the land on which the object stood is caused by the order or by the taking of any action required by the order, compensation of an amount equal to that of the depreciation is payable by the Secretary of State⁷. Any dispute as to the right to, or amount of, compensation must be determined by the Lands Tribunal⁸.

1 For the meaning of 'occupier' see para 103 note 4 ante.

2 Ie an order under the Land Powers (Defence) Act 1958 s 10(1) (as amended) or s 11(1) (as amended): see para 110 ante.

3 As to the Secretary of State see para 2 ante.

4 Where any materials require disposal in consequence of action required by such an order and that action was taken in compliance with the order by a person not entitled to the materials or by the Secretary of State who made the order, that person or the Secretary of State may, and if so required by the person to whom the order is directed must, sell or otherwise dispose of any of the materials of which the person entitled does not take possession within seven days from completion of the action, and must pay the proceeds to the person so entitled: Land Powers (Defence) Act 1958 ss 10(6), 11(3). Any compensation payable to any person for depreciation in value of an interest in land must be reduced by the amount of such proceeds and an amount equal to the value of any such materials to which that person is entitled which are not so disposed of: ss 10(6), 11(3).

5 As to compensation for disturbance see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 814 et seq.

6 Land Powers (Defence) Act 1958 ss 10(5), 11(3).

7 Ibid ss 10(5), 11(3).

8 Ibid ss 10(5), 11(3). As to the Lands Tribunal generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

UPDATE

113 Compensation

TEXT AND NOTE 8--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Powers (Defence) Act 1958 s 10(5) (amended by SI 2009/1307).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(iii) Prevention of Interference with Airfields or Apparatus/114. Power to survey land.

114. Power to survey land.

Where by virtue of any of the provisions of the Land Powers (Defence) Act 1958 any duty is to be performed, or any power exercised, by a Secretary of State¹, any person duly authorised in writing² by him may, at any reasonable time, enter upon any land not covered by buildings for the purpose of surveying it³ in connection with, or with proposals for, the performance or exercise of that duty or power⁴.

1 As to the Secretary of State see para 2 ante.

2 The authority must be produced, if required, before entry is made on the land: see the Land Powers (Defence) Act 1958 s 21(1), Sch 4 para 1.

3 This power to survey land includes power to search and bore for the purpose of ascertaining the nature of the subsoil: *ibid* Sch 4 para 4.

4 *Ibid* s 21(1). These provisions must not be construed as derogating from any right of entry under any other enactment, including any enactment contained in the Land Powers (Defence) Act 1958 itself: s 21(2). A person entering land in pursuance of this provision may only demand admission as of right if not less than seven days' written notice of the intended entry has been given to the occupier: Sch 4 para 1. For the meaning of 'occupier' see para 103 note 4 ante. If the entry is in order to search and bore (see note 3 *supra*), the notice must be not less than 28 days: Sch 4 para 4 proviso. Any person suffering loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels by the exercise of any of these powers is entitled to compensation, and any dispute as to the right to, or the amount of, compensation must be determined by the Lands Tribunal: see Sch 4 para 3. As to the Lands Tribunal, its jurisdiction and procedure see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq. Any person wilfully obstructing another person acting in the exercise of any of these powers is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Sch 4 para 2 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 40 note 4 ante. These powers presumably cannot be exercised in relation to orders under the Land Powers (Defence) Act 1958 s 6 (as amended) (training orders: see para 102 et seq ante), until such orders are actually made, because of the restriction to powers to be exercised by virtue of any of the provisions of the Land Powers (Defence) Act 1958: see s 21(1). For an example of the provision of future powers by this Act see para 110 ante (referring to ss 10(1), (11)(1) (both as amended), which contain the words 'where land is, or is to be, used').

UPDATE

114 Power to survey land

NOTE 4--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Powers (Defence) Act 1958 Sch 4 para 3 (amended by SI 2009/1307).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(iv) Protection of Military Remains/115. Designation of protected military aircraft and vessels and controlled sites.

(iv) Protection of Military Remains

115. Designation of protected military aircraft and vessels and controlled sites.

The Protection of Military Remains Act 1986 secures the protection from unauthorised interference of the remains of military aircraft and vessels that have crashed, sunk or been stranded and of associated human remains¹. The Protection of Military Remains Act 1986 applies to any aircraft² which has crashed before or after the passing of the Act while in military service³. The Secretary of State⁴ may by order made by statutory instrument designate as a vessel to which the Act applies any vessel which appears to him to have sunk or been stranded, before or after the passing of the Act, while in military service, irrespective of whether the situation of the remains⁵ of the vessel is known⁶. He must not so designate a vessel unless it appears to him that the vessel sank or was stranded on or after 4 August 1914⁷ and, in the case of a vessel which sank or was stranded while in service with, or while being used for the purposes of, any of the armed forces of a country or territory outside the United Kingdom, that remains of the vessel are in United Kingdom waters⁸. The Secretary of State may also by order made by statutory instrument designate as a controlled site any area, whether in the United Kingdom, in United Kingdom waters or in international waters⁹, which appears to him to contain a place comprising the remains of, or of a substantial part of, an aircraft to which the Protection of Military Remains Act 1986 applies or a vessel which has so sunk or been stranded¹⁰. He must not so designate an area unless it appears to him that less than 200 years have elapsed since the crash, sinking or stranding, that the owners and occupiers of such land in the United Kingdom as is to be designated as, or as part of, that site do not object to the terms of the designating order which affect them and, where the aircraft or vessel crashed, sank or was stranded while in service with, or while being used for the purposes of, any of the armed forces of a country or territory outside the United Kingdom, that the remains are in the United Kingdom or in United Kingdom waters¹¹. The power to designate any land as, or as part of, a controlled site applies to Crown land as to other land¹². A place, whether in the United Kingdom, in United Kingdom waters or in international waters, is a protected place if it comprises the remains of, or a substantial part of, an aircraft or vessel to which the Protection of Military Remains Act 1986 applies, and it is on or in the sea bed¹³ or is the place, or in the immediate vicinity of the place, where the remains were left by the crash, sinking or stranding of that aircraft or vessel¹⁴. Where a place comprising the remains of, or a substantial part of, an aircraft or vessel which has crashed, sunk or been stranded while in military service is situated only partly in United Kingdom waters, that place is to be treated as if the part situated in United Kingdom waters and the part situated in the United Kingdom or in international waters were separate places each of which comprised the remains of a substantial part of the aircraft or vessel¹⁵.

1 The Protection of Military Remains Act 1986 extends to Northern Ireland: s 10(3). It may be extended by Order in Council to any of the Channel Islands or any colony: s 10(4). See the Protection of Military Remains Act 1986 (Guernsey) Order 1987, SI 1987/1281. As to the meaning of 'colony' see para 20 note 4 ante; and COMMONWEALTH vol 13 (2009) PARA 705.

2 'Aircraft' includes a hovercraft, glider or balloon: Protection of Military Remains Act 1986 s 9(1).

3 Ibid s 1(1). An aircraft or vessel is to be regarded as having been in military service at a particular time if at that time it was: (1) in service with, or being used for the purposes of, any of the armed forces of the United

Kingdom or any other country or territory; or (2) in the case of an aircraft, being taken from one place to another for delivery into service with any of the armed forces of the United Kingdom: s 9(1), (2). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

4 As to the Secretary of State see para 2 ante.

5 'Remains' in relation to, or to part of, an aircraft or vessel which has crashed, sunk or been stranded, includes any cargo, munitions, apparel or personal effects which were on board the aircraft or vessel during its final flight or voyage (including, in the case of a vessel, any aircraft which were on board) and any human remains associated with the aircraft or vessel: Protection of Military Remains Act 1986 s 9(1).

6 Ibid s 1(2)(a). See the Protection of Military Remains Act 1986 (Designation of Vessels and Controlled Sites) Order 2002, SI 2002/1761 (amended by SI 2003/405). Any administrative expenses incurred by the Secretary of State under the Protection of Military Remains Act 1986 are payable out of money provided by Parliament: s 8.

7 The Secretary of State may by order made by statutory instrument substitute references to a later date for this reference to 4 August 1914 or for any reference to a date inserted by an order under this provision; and such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: ibid s 1(8). At the date at which this volume states the law no such order had been made.

8 Ibid s 1(3). 'United Kingdom waters' means any part of the sea within the seaward limits of the territorial waters adjacent to the United Kingdom: s 9(1). As to United Kingdom territorial waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 124-126; WATER AND WATERWAYS vol 100 (2009) PARA 31.

9 'International waters' means any part of the sea outside the seaward limits of the territorial waters adjacent to any country or territory: ibid s 9(1).

10 Ibid s 1(2)(b). See the Protection of Military Remains Act 1986 (Designation of Vessels and Controlled Sites) Order 2002, SI 2002/1761 (amended by SI 2003/405).

11 Protection of Military Remains Act 1986 s 1(4). An area designated as a controlled site must not extend further around any place appearing to the Secretary of State to comprise remains of an aircraft or vessel which has crashed, sunk or been stranded while in military service than appears to him appropriate for the purpose of protecting or preserving those remains or on account of the difficulty of identifying that place; and no controlled site may have a boundary in international waters any two points on which are more than two nautical miles apart: s 1(5). 'Nautical miles' means international nautical miles of 1,852 metres: s 9(1).

12 Ibid s 1(7). 'Crown land' has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 s 50 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1003): Protection of Military Remains Act 1986 s 9(1). As to Crown land generally see CROWN PROPERTY.

13 'Sea' includes the sea bed and, so far as the tide flows at mean high water springs, any estuary or arm of the sea and the waters of any channel, creek, bay or river: ibid s 9(1). 'Sea bed' includes any area submerged at mean high water springs: s 9(1).

14 Ibid ss 1(6), 9(1). No place in international waters may be a protected place by virtue of its comprising remains of an aircraft or vessel which has crashed, sunk or been stranded while in service with, or while being used for the purposes of, any of the armed forces of a country or territory outside the United Kingdom: s 1(6).

15 Ibid s 9(3).

UPDATE

115 Designation of protected military aircraft and vessels and controlled sites

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--See *R (on the application of Fogg) v Secretary of State for Defence* [2006] EWCA Civ 1270, [2007] QB 96 (wreck of merchant ship sunk while part of a convoy was 'in service with' armed forces).

NOTES 6-10--See the Protection of Military Remains Act 1986 (Designation of Vessels and Controlled Sites) Order 2009, SI 2010/3380.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(iv) Protection of Military Remains/116. Offences in relation to remains and prohibited operations.

116. Offences in relation to remains and prohibited operations.

A person¹ is guilty of an offence: (1) if he tampers with, damages, moves, removes or unearths any remains² of an aircraft³ or vessel which are comprised in a place which is part of a controlled site⁴, or enters any hatch or other opening in any of the remains which enclose any part of the interior of an aircraft or vessel, or causes or permits any other person to do these things⁵; (2) if, believing or having reasonable grounds for suspecting that any place comprises any remains of an aircraft or vessel which has crashed, sunk or been stranded while in military service⁶, he contravenes the provisions set out in head (1) above in relation to any remains by virtue of which that place is a protected place⁷; (3) if he knowingly takes part in, or causes or permits any other person to take part in the carrying out of any prohibited excavation or diving or salvage operation⁸; (4) if he knowingly uses, or causes or permits any other person to use, any equipment in connection with the carrying out of any such excavation or operation⁹. In proceedings against any person for any of these offences, it is a defence for him to show that what he did or what he caused or permitted to be done was done under and in accordance with a licence¹⁰ or was urgently necessary in the interests of safety or health or to prevent or avoid serious damage to property¹¹. In proceedings against any person for an offence in respect of anything done at or in relation to a place which is not part of a controlled site, it is a defence for him to show that he believed on reasonable grounds that the circumstances were such that, if those had been the circumstances, the place would not have been a protected place¹². A person guilty of any of these offences is liable, on summary conviction, to a fine not exceeding the statutory maximum¹³ or, on conviction on indictment, to an unlimited fine¹⁴.

An authorised person¹⁵ is entitled to board and search any vessel which is in United Kingdom waters or any vessel which is in international waters¹⁶ and is a British-controlled ship¹⁷ for the purpose of determining whether an offence is being, has been or is to be committed¹⁸. It is an offence to obstruct intentionally a person exercising such power¹⁹.

1 Where a body corporate is guilty of an offence under the Protection of Military Remains Act 1986 and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly: s 7(2). Where the affairs of a body corporate are managed by its members, s 7(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 7(3).

2 As to the meaning of 'remains' see para 115 note 5 ante. References in *ibid* s 2 to remains comprised in a protected place or comprised in a place which is part of a controlled site include remains other than those by virtue of which the place is a protected place or the site was or could have been designated: s 2(9). As to protected places see para 115 ante.

3 As to the meaning of 'aircraft' see para 115 note 2 ante.

4 Protection of Military Remains Act 1986 s 2(1)(a), (2)(a).

5 *Ibid* s 2(1)(a), (2)(b), (c).

6 As to aircraft and vessels in military service see para 115 note 3 ante.

7 Protection of Military Remains Act 1986 s 2(1)(b).

8 *Ibid* s 2(1)(c). An excavation or diving or salvage operation is prohibited: (1) if it is carried out at a controlled site for the purpose of investigating or recording details of any remains of an aircraft or vessel

comprised in a place which is part of that site; (2) if it is carried out for the purpose of doing something that constitutes, or is likely to involve, a contravention of s 2(2) (see head (1) in the text) in relation to any remains of an aircraft or vessel comprised in a protected place or in a place which is part of such a site; or (3) in the case of an excavation, if it is carried out for the purpose of discovering whether any place in the United Kingdom or United Kingdom waters comprises any remains of an aircraft or vessel which has crashed, sunk or been stranded while in military service: s 2(3). As to the meaning of 'United Kingdom' see para 20 note 1 ante. For the meaning of 'United Kingdom waters' see para 115 note 8 ante. Nothing in s 2 is to be construed as restricting any power to carry out works conferred by or under any enactment: s 2(8).

9 Ibid s 2(1)(d).

10 Ibid s 2(4). As to licences see para 118 post.

11 Ibid s 2(6).

12 Ibid s 2(5).

13 The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140.

14 Protection of Military Remains Act 1986 s 2(7). Property used in the commission of an offence under s 2 may be forfeited: see s 7(1) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 100).

15 Is a person authorised in writing by the Secretary of State to exercise the powers conferred by the Protection of Military Remains Act 1986 s 6, whether in all cases or only in cases specified or described in the authority, or a person of a description of persons so authorised: s 6(8). As to the Secretary of State see para 2 ante.

16 For the meaning of 'international waters' see para 115 note 9 ante.

17 See para 117 post.

18 Protection of Military Remains Act 1986 s 6(1). An authorised person may not board a British-controlled ship unless at the time he made his first request to board the vessel he had reasonable grounds for believing that such an offence was being, had been or was to be so committed: s 6(2). 'British-controlled ship' means a ship registered in the United Kingdom or a ship exempted from such registration under the Merchant Shipping Act 1995: Protection of Military Remains Act 1986 s 9(1). As to the registration of ships see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 245 et seq. An authorised person who has boarded a vessel may seize anything which is on board the vessel if he has reasonable grounds for believing: (1) that it is evidence of an offence under the Protection of Military Remains Act 1986 or has been obtained in consequence of the commission of such an offence; and (2) that it is necessary to seize it to prevent its being concealed, lost, altered or destroyed: s 6(3). An authorised person may use such force as is reasonably necessary for the purpose of exercising any power conferred on him and may do anything else reasonably necessary for that purpose, including ordering a vessel to stop: s 6(4). A person on whom a power is conferred must, if required to do so by the master of the vessel, produce his authority before exercising the power: s 6(5).

19 Ibid s 6(6). For the purpose of conferring jurisdiction on any court, an offence is deemed to have been committed in any place where the offender may for the time being be: s 6(7). The offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale: s 6(6). As to the standard scale see para 40 note 4 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(iv) Protection of Military Remains/117. Extraterritorial jurisdiction.

117. Extraterritorial jurisdiction.

Where prohibited acts¹ take place in international waters² or a prohibited excavation or operation³ is carried out in international waters, a person is guilty of an offence only: (1) if the acts or omissions constituting the offence are committed in the United Kingdom⁴, in United Kingdom waters⁵ or on board a British-controlled ship⁶; or (2) in a case where those acts or omissions are committed in international waters but not on board a British-controlled ship, if that person is a British citizen, a British overseas territories citizen or a British overseas citizen⁷, or is a British subject⁸ or a British protected person⁹, or is a company¹⁰. Proceedings for an offence under these provisions¹¹ may not be instituted except by or with the consent of the Director of Public Prosecutions¹².

1 The contravention of the Protection of Military Remains Act 1986 s 2(2) or an excavation or operation prohibited by s 2(3): see para 116 ante.

2 For the meaning of 'international waters' see para 115 note 9 ante.

3 See para 116 ante.

4 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

5 For the meaning of 'United Kingdom waters' see para 115 note 8 ante.

6 Protection of Military Remains Act 1986 s 3(1)(a). For the meaning of 'British-controlled ship' see para 116 note 18 ante.

7 As to British citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) paras 8, 23-43. As to British overseas territories citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) paras 8, 44-57. As to British overseas citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) paras 8, 58-62.

8 The under the British Nationality Act 1981: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (Reissue) paras 9, 66-71.

9 The within the meaning of British Nationality Act 1981: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) paras 10, 72-76.

10 Protection of Military Remains Act 1986 s 3(1)(b) (amended by the British Overseas Territories Act 2002 s 2(3)). The company must be one within the meaning of the Companies Act 1985: see COMPANIES vol 14 (2009) PARAS 1, 24. For the purpose only of conferring jurisdiction on any court, an offence is deemed to have been committed in any place where the offender may for the time being be: Protection of Military Remains Act 1986 s 3(2).

11 The offences under *ibid* s 2 and where s 3(1) applies.

12 *Ibid* s 3(3)(a). As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq.

UPDATE

117 Extraterritorial jurisdiction

NOTE 10--Protection of Military Remains Act 1986 s 3(1)(b) amended: SI 2009/1941.

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118. Licences to carry out works.

The Secretary of State may grant licences authorising activities which would otherwise constitute offences under these provisions¹. Such a licence may be granted to a particular person, to persons of a particular description or to persons generally, and may be contained in a controlled site order². A person is guilty of an offence if, for the purpose of obtaining a licence³, he makes a statement, or furnishes a document or information, which he knows to be false in a material particular or he recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular⁴.

1 Protection of Military Remains Act 1986 s 4(1). As to offences see para 116 ante. The Secretary of State in granting a licence may impose such conditions with respect to the doing of anything authorised by the licence as he may specify in the licence for any purpose connected with protecting or preserving any remains to which the licence relates: s 4(3). As to the Secretary of State see para 2 ante. A licence continues in force, subject to any amendments made from time to time by the Secretary of State, until the expiration of such period as is specified in the licence or until revoked, whichever is the earlier: s 4(4). Where a licence (other than a licence contained in an order designating a controlled site: see para 115 ante) is granted, amended or revoked, the Secretary of State must, as he thinks fit, either: (1) send a copy of the licence, amendment or revocation to the licensee; or (2) publish such a copy in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the licence, amendment or revocation: s 4(5).

The Secretary of State may by order made by statutory instrument require an application made to him for a licence under s 4 to be accompanied, in such circumstances as may be specified in the order, by a fee of an amount so specified: s 5(3). Any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 5(4). At the date at which this volume states the law no such order had been made. Any fees received by the Secretary of State by virtue of an order are to be paid into the Consolidated Fund: s 5(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

2 Ibid s 4(2). The grant of a licence is without prejudice to the rights of any person, including the Crown, as the owner of an interest in any land where any remains of an aircraft or vessel are, or are thought to be, situated or as the owner of, or the person entitled, whether under any enactment or rule of law or otherwise, to claim an interest in any such remains: s 4(6).

3 Ie whether for himself or another or for persons of any description: ibid s 5(1).

4 Ibid s 5(1). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to an unlimited fine: s 5(2). As to the statutory maximum see para 116 note 13 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(v) Acquisition and Use of Land/119. Purchase or lease under the Military Lands Acts.

(v) Acquisition and Use of Land

119. Purchase or lease under the Military Lands Acts.

Land¹ in the United Kingdom² may be purchased under the Military Lands Acts 1892 to 1903³: (1) by a Secretary of State⁴ for naval, military or air force purposes⁵, or for the service of any visiting force or headquarters⁶; or (2) with the consent of a Secretary of State, by a territorial, auxiliary and volunteer reserve association⁷ for the purposes of the Reserve Forces Act 1996⁸. At the request of one or more such associations, a county or district council may purchase⁹ or hire¹⁰ land on behalf of that association or those associations for military or air force purposes, may hold land on its or their behalf, and may lease land¹¹ so held to it or them for such purposes¹². Land vested in the Crown and under the management of commissioners or departments other than the Crown Estate Commissioners, and land belonging to the Duchy of Cornwall or held by any public department for the public service, may be leased for military or air force purposes to a Secretary of State, an association or a county or district council for a term not exceeding 21 years¹³. Certain portions of the royal parks, gardens and possessions may be leased to a Secretary of State, an association or a county or district council for military or air force purposes for a term not exceeding 21 years, but any such lease is revocable at any time by the Crown¹⁴. Lands held by any person or body of persons or authority for ecclesiastical or public purposes may be similarly leased¹⁵.

1 'Land', in the Military Lands Acts 1892 to 1903, includes any easement in or over land, and also any right of firing over land or other right of user (Military Lands Act 1892 s 23), and also the bed of the sea or any tidal water and the right of interference with the free use of any land (Military Lands Act 1900 s 3).

2 'United Kingdom', in the Military Lands Acts 1892 to 1903, means Great Britain and Northern Ireland, to the exclusion of the Channel Islands and the Isle of Man: see the Union with Ireland Act 1800 art 1; and the Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, art 2. Cf para 20 note 1 ante. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 3.

3 The following Acts may be cited as the Military Lands Acts 1892 to 1903, and are to be construed as one: the Military Lands Act 1892; the Military Lands Act 1897; the Military Lands Act 1900; and the Military Lands Act 1903: see s 2. The safeguards provided for owners of land by the Land Powers (Defence) Act 1958 (see paras 102-107 ante; and WAR AND ARMED CONFLICT) are observed in the case of a proposed compulsory purchase of land for defence purposes not falling within the ambit of that Act as in the case of a compulsory purchase within its ambit: see 601 HC Official Report (5th series), written answers cols 69-73; 619 HC Official Report (5th series), written answers col 26. As to compulsory purchase of land generally see COMPULSORY ACQUISITION OF LAND.

4 As to the Secretary of State see para 2 ante.

5 Military Lands Act 1892 s 1(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); Air Force (Application of Enactments) (No 1) Order 1918, SR & O 1918/538, art 1, Schedule (amended by SR & O 1923/1565; SI 1964/488). 'Military purpose' includes rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts, targets, batteries and other accommodation, the storing of arms, military drill and any other purpose connected with military matters approved by the Secretary of State: Military Lands Act 1892 s 23. 'Air force purposes' includes the building and enlarging of barracks, camps and aerodromes, the storing of aircraft and aircraft material, air force training and any other purpose connected with air force matters approved by the Secretary of State: Air Force (Application of Enactments) (No 1) Order 1918, SR & O 1918/538, Schedule (as so amended).

6 Any power exercisable in relation to land under the Military Lands Acts 1892 to 1903 may be exercised for the purposes of certain visiting forces or headquarters: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 5(1), (2), Sch 3; and paras 142, 150 post.

7 Territorial, auxiliary and volunteer reserve associations are constituted under schemes made by the Defence Council pursuant to the Reserve Forces Act 1996 s 111, Sch 4: see para 223 et seq post. As to the Defence Council see para 2 ante. The Auxiliary Forces Act 1953 s 3, Sch 1 (repealed), as originally enacted, provided for the formation of joint associations, territorial and army volunteer reserve associations and auxiliary air force associations, but the new Sch 1 introduced into that Act by an order made under the Reserve Forces Act 1966 (repealed) did not. This change is preserved in the Reserve Forces Act 1996 s 111, Sch 4 and it seems that all such associations are now in effect joint. This is the effect of the Reserve Forces Act 1996 s 110, which refers merely to a 'territorial, auxiliary and volunteer association'. The former territorial associations and auxiliary air force associations were wound up, and their property etc transferred to the new associations, with effect from 31 March 1968, by order of the Defence Council: see the London Gazette, 28 May 1968.

8 Military Lands Act 1892 s 1(2), as applied and adapted by the Territorial and Army Volunteer Reserve (Military Lands) Regulations 1973, reg 3, Schedule, and the Regulations for the Royal Auxiliary Air Force and County Associations 1947, reg 353(b), App 10 para 1(a). These regulations are not statutory instruments but were made under the Auxiliary Forces Act 1953; although that Act was repealed by the Reserve Forces Act 1980 s 157(1), Sch 10, the regulation-making powers were re-enacted in s 128, and consequently those regulations were saved (see s 157(1), Sch 8 para 1; and the Interpretation Act 1978 s 17(2)). The Territorial and Army Volunteer Reserve (Military Lands) Regulations 1973, Schedule modifies the Military Lands Act 1892 s 1(2), so as to empower an association to purchase land, with the consent of the Secretary of State, 'for military purposes', and is to this extent at variance with the corresponding air force regulations (see supra) which provide that the power to buy land is to be for the purposes of the Auxiliary Forces Act 1953 (see now the Reserve Forces Act 1996). This apparent discrepancy appears to have been removed by the Territorial, Auxiliary and Volunteer Reserve Associations Regulations 1978, reg 11.061, which defines the power of an association to buy land as being a power to do so for the purposes of the Auxiliary Forces Act 1953 (see now the Reserve Forces Act 1996).

The power to purchase land formerly extended to the Royal Naval Volunteer Reserve, but this has lapsed with the abolition of that force by the Reserve Forces Act 1966 s 3(1) (repealed).

Before giving consent to a proposal by an association to buy land, the Secretary of State must send an inspector to ascertain the capability of the land to be used for military or air force purposes with due regard to the convenience and safety of the public: Military Lands Act 1892 s 1(4). An association may, with the consent of the Secretary of State, borrow money for such a purchase on the security of the land acquired or other property or revenues of the association: s 5. As to the extension of powers of borrowing and lending to the purchase and erection of buildings see the Military Lands Act 1897 s 1 (amended by the National Loans Act 1968 s 24(2), Sch 6 Pt II).

9 The purchase may be made by agreement, or, if so authorised by the Secretary of State, compulsorily: Military Lands Act 1892 s 1(3) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6(1), Sch 4).

10 The power to hire land must be exercised by agreement for a period of not less than 21 years; one council may contribute towards the expenses incurred by another in purchasing or hiring land for the purposes mentioned; the expenses of so hiring or contributing may be defrayed in the same manner as those of purchasing; and the payment of those expenses (so far as they are in the nature of capital expenses) is a purpose for which the council may borrow: Military Lands Act 1903 s 1(1). See also the Local Government Act 1972 s 172, Sch 13 para 13 (as amended), which provides a further power of borrowing for the purpose of lending to another authority, and for other purposes approved by the Secretary of State: see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 516. The Public Works Loan Commissioners may make loans to a council out of the National Loans Fund for these purposes: see the National Loans Act 1968 s 3(11), Sch 4 para 1 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1385. As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 727 et seq.

11 A lease by a county or district council to an association or associations must be for a period not exceeding 99 years: Military Lands Act 1900 s 1(1). An association may itself borrow on the security of any such lease: s 1(2) (amended by the National Loans Act 1968 s 24(2), Sch 6 Pt II). As to the borrowing powers of associations see also the Military Lands Act 1892 s 5; and the Military Lands Act 1897 s 1 (as amended: see note 8 supra). If an association is wound up, or the land ceases to be used for military or air force purposes, the lease vests in the Secretary of State, subject to the repayment of any money borrowed on the security of the lease and not already repaid: Military Lands Act 1900 s 1(3).

12 Military Lands Act 1892 s 1(3) (as amended: see note 9 supra); Military Lands Act 1900 s 1(1); Military Lands Act 1903 s 1(1), (3). As to the enactment of regulations by the Defence Council authorising and regulating the acquisition by or on behalf of a reserve association of land and the disposal of any land see the Reserve Forces Act 1996 s 117(1)(b).

13 Military Lands Act 1892 s 10(1), (2) (s 10(1) amended by the Crown Estate Act 1961 s 9(4), Sch 3 Pt II; and the Duchy of Lancaster Act 1988 s 1(4), Schedule; and the Military Lands Act 1892 s 10(2) amended by the Crown Estate Act 1956 s 1; the Crown Estate Act 1961 s 1; and the Forestry (Title of Commissioners of Woods)

Order 1924, SR & O 1924/1370); Military Lands Act 1903 s 1(3). Any such lease ceases to have effect if the land ceases to be used for the purposes for which the lease was granted: Military Lands Act 1892 s 10(1) (as so amended). Such cessation of use is deemed to have occurred where there has not been such use for a period of one year, and a certificate to that effect is given by a Secretary of State, and such a certificate is conclusive evidence of the non-user: s 12. Section 10(1) was amended by the Crown Estate Act 1961 s 9(4), Sch 3 Pt II, to omit words applying to land belonging to the Crown as being redundant in view of the general powers of management conferred by s 1 (as amended), but this repeal saved the powers conferred by the Military Lands Act 1892 s 10(2) on commissioners or departments other than the Crown Estate Commissioners. As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) para 280 et seq.

14 Military Lands Act 1892 s 10(3); Military Lands Act 1903 s 1(3).

15 Military Lands Act 1892 s 11(1); Military Lands Act 1903 s 1(3). If the land ceases to be used for the purpose for which the lease was granted, the lease ceases to have effect: Military Lands Act 1892 s 11(2). As to conclusive proof of such non-user see s 12; and note 13 supra. An ecclesiastical corporation sole below the dignity of a bishop (eg the incumbent of a benefice) may not grant any such lease without the consent in writing of the bishop having jurisdiction over him and of the patron of the preferment to which the land belongs, or the patron's guardians or trustees: s 11(1)(a). A majority of a meeting of any trustees, commissioners or other persons in whom the land to be leased is vested may grant a lease under s 11 (as amended) and execute any instrument required for that purpose: s 11(1)(c). As to ecclesiastical corporations sole see ECCLESIASTICAL LAW vol 14 para 1254.

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120. Incorporation of the Lands Clauses Acts.

With certain exceptions, the Lands Clauses Acts¹ are incorporated with the Military Lands Acts 1892 to 1903² for the purpose of the purchase of land under the latter Acts by a Secretary of State³ or a territorial, auxiliary and volunteer reserve association⁴. Where the purchaser is a local authority, however, a different procedure applies⁵.

1 The Lands Clauses Acts 1845 to 1895: these comprise several Acts, of which only the Lands Clauses Consolidation Act 1845 and the Lands Clauses Consolidation Acts Amendment Act 1860 remain unrepealed. See COMPULSORY ACQUISITION OF LAND.

2 As to the Military Lands Acts 1892 to 1903 see para 119 note 3 ante.

3 As to the Secretary of State see para 2 ante.

4 See the Military Lands Act 1892 s 2 (as adapted and applied: see para 119 note 8 ante). As to associations see para 119 note 7 ante. The exceptions to the incorporation of the Lands Clauses Acts are the Lands Clauses Consolidation Act 1845 ss 16, 17 (requirements before powers of compulsory acquisition are put in force) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 615), and ss 150, 151 (as amended) (affording access to the special Act) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 512); Military Lands Act 1892 s 2(1). The bond required by the Lands Clauses Consolidation Act 1845 s 85 (as amended), to be given on entry before a purchase (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) para 639 et seq) is valid simply under the seal of the Secretary of State, and is sufficient without the addition of sureties: Military Lands Act 1892 s 2(3)(a). In construing the Military Lands Acts 1892 to 1903, and the incorporated Lands Clauses Acts, the Military Lands Act 1892 is deemed to be the special Act, and the Secretary of State or the appropriate association, as the case may be, the promoter of the undertaking: s 2(2). As to the meaning and relevance of this provision see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq. See also the Military Lands Act 1900 s 4. As to the New Forest see the Military Lands Act 1892 s 24 (amended by the Crown Estate Act 1961 ss 9(4), 10(2), Sch 3 Pt II; and the Statute Law (Repeals) Act 1973).

5 The procedure provided by the Military Lands Act 1892 s 2 (as amended) for the compulsory purchase of land for the purposes of the Military Lands Acts 1892 to 1903 no longer applies when the purchaser is a local authority: see the Acquisition of Land Act 1981 s 2(2). In any such case, the procedure is now governed by that Act (in relation to the obtaining of a compulsory purchase order) and by the Compulsory Purchase Act 1965 (in relation to the vesting of the land in the local authority): see para 122 post. As to the assessment of compensation, whoever the purchaser may be see para 122 post.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(v) Acquisition and Use of Land/121. Procedure for compulsory purchase.

121. Procedure for compulsory purchase.

Where the intending purchaser of land is the Secretary of State¹ or a territorial, auxiliary and volunteer reserve association², the incorporated provisions of the Lands Clauses Acts³ relating to compulsory purchase of land may not be put into force until a provisional order has been made⁴ and the sanction of Parliament obtained⁵. The purchaser must serve notice on every owner, lessee or occupier of the land intended to be purchased, describing that land and also, generally, the purpose to which it is to be applied, stating that it is the intention of the purchaser to obtain the sanction of Parliament to the purchase and requesting the person served to forward to the purchaser any objection he may have to such action⁶. After the required notices have been served, if the Secretary of State is the purchaser, a public local inquiry must be held⁷ into the objections made by any person having an interest⁸. If the purchaser is an association, it may, after serving the required notices, present a petition to the Secretary of State praying that it may be allowed to put in force, in relation to the land specified, the powers with respect to compulsory purchase provided for by the Lands Clauses Acts⁹, whereupon, after the required notices have been served, and unless the Secretary of State decides to dismiss the petition, he must direct the holding of a public local inquiry into the proposal¹⁰. After the public local inquiry has been held, the Secretary of State may, if satisfied that the land ought to be taken, make a provisional order to that effect, authorising the taking of the land by himself or by the petitioning association, as the case may be¹¹.

When issued, the provisional order may be submitted to Parliament for confirmation by a Bill introduced by the Secretary of State¹². A petition may be presented against any provision of the Bill while it is pending, and, if any such petition is presented, the Bill may be referred to a select committee, before which the petitioner has a right to appear and oppose as in the case of private bills¹³.

If the prospective purchaser is a local authority¹⁴, authority to purchase the land compulsorily is conferred by a compulsory purchase order, made by the local authority and requiring confirmation by the Secretary of State, under the Acquisition of Land Act 1981¹⁵.

1 As to the Secretary of State see para 2 ante.

2 As to these associations see para 119 note 7 ante.

3 See para 120 ante.

4 The details of the procedure in respect of a provisional order depend on the particular statute under which the order is made, in this case the Military Lands Act 1892 s 2 (as amended).

5 Ibid s 2(4).

6 Ibid s 2(5). Where the Secretary of State is the purchaser, he must serve these notices at least one month before the making of the provisional order: s 2(5).

7 Before a local inquiry is held, the Secretary of State must publish a notice of the intention to hold the inquiry: (1) by affixing copies conspicuously on or in the immediate neighbourhood of the land proposed to be acquired; and (2) by advertising the notice once at least in each of two successive weeks in a local newspaper circulating in the neighbourhood: ibid s 2(8).

8 Ibid s 2(6).

9 Ibid s 2(7)(a).

10 Ibid s 2(7)(b).

11 Ibid s 2(9).

12 Ibid s 2(9). Unless and until this is done and the provisional order is confirmed by Parliament, the order is of no effect: s 2(9).

13 Ibid s 2(10).

14 The compulsory purchase procedure under the Military Lands Act 1892 no longer applies in relation to local authorities: see para 120 note 5 ante. See also para 122 post.

15 See the Acquisition of Land Act 1981 ss 2(2), 10-15 (s 12 as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557 et seq. Once the compulsory purchase order has been made, the procedure for the vesting of title in the acquiring local authority is governed by the Compulsory Purchase Act 1965: see para 122 post. As to the assessment of compensation, whoever the purchaser may be see para 122 post.

UPDATE

121 Procedure for compulsory purchase

TEXT AND NOTE 6--Now, the purchaser must serve notice on every person who falls within the 1892 Act s 2(5A): s 2(5) (s 2(5) amended, s 2(5A) added by the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519).

NOTE 9--1892 Act s 2(7)(a) amended: Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007, SI 2007/1519.

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122. Vesting of land and compensation.

Where land is acquired compulsorily¹ under the Military Lands Acts 1892 to 1903² by the Secretary of State³ or a territorial, auxiliary and volunteer reserve association⁴, the actual vesting of the land, after a provisional order has been confirmed by Parliament, is governed by the provisions of the Lands Clauses Acts as incorporated, with modifications, with the Military Lands Act 1892⁵. The most important modification is that where the Secretary of State is the purchaser and compensation has been paid to any person in respect of any estate or interest in land taken under the Acts, the land vests in the Secretary of State for all the estate or interest of that person, including any estate or interest held in trust by him or capable of being conveyed by him in pursuance of any power; but the Secretary of State may require him to execute a conveyance⁶.

Where the acquiring authority under the Military Lands Acts 1892 to 1903 is a local authority, the procedure for the actual vesting of the land, after a compulsory purchase order has been made and confirmed under the provisions of the Acquisition of Lands Act 1981⁷, is governed by the Compulsory Purchase Act 1965⁸.

The right to compensation for land compulsorily acquired under the Military Lands Acts 1892 to 1903 is derived from the wording of those Acts themselves and of the Lands Clauses Acts⁹. At the present time, whether the acquiring authority is the Secretary of State, an association or a local authority, the compensation for land acquired under the Military Lands Acts 1892 to 1903 is to be assessed by the Lands Tribunal¹⁰.

1 As to the power to acquire land compulsorily see paras 119-120 ante.

2 As to the Military Lands Acts 1892 to 1903 see para 119 note 3 ante.

3 As to the Secretary of State see para 2 ante.

4 As to such associations see para 119 note 7 ante.

5 See para 120 ante.

6 Military Lands Act 1892 s 2(3)(b). As to the modern application of the Lands Clauses Acts see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq.

7 See the Acquisition of Land Act 1981 Pt II (ss 10-15) (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557 et seq.

8 See the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended); and COMPULSORY ACQUISITION OF LAND.

9 The Military Lands Acts 1892 to 1903 use terms such as 'purchase', 'lease' and 'hire', and the Lands Clauses Acts refer throughout to the 'purchase' of land. These expressions plainly imply that the acquiring authority is to pay the purchase price of the interest acquired, and all that is necessary is to provide for the acquisition procedure and for the assessment, in default of agreement, of the purchase price. For this purpose, 'purchase money' is the same as 'compensation': see *IRC v Glasgow and South-Western Rly Co* (1887) 12 App Cas 315, HL.

10 See the Land Compensation Act 1961 s 1. Consequently, the provisions as to the assessment of compensation contained in the Lands Clauses Consolidation Act 1845 s 21 (as amended) are now superseded. As to the Lands Tribunal and its procedure see the Lands Tribunal Act 1949 s 3 (as amended); the Lands Tribunal Rules 1996, SI 1996/1022 (as amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et

seq. As to the general rules for the assessment of compensation see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 753 et seq.

UPDATE

122 Vesting of land and compensation

TEXT AND NOTE 10--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Compensation Act 1961 s 1 (amended by SI 2009/1307).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/(v) Acquisition and Use of Land/123. Entry on land for defence purposes; stopping up and diversion of footpaths.

123. Entry on land for defence purposes; stopping up and diversion of footpaths.

A Secretary of State¹ may authorise the entry of any person upon land for the provision, repair or replacement of alignment marks for coast defence purposes or, in the case of the air force, of air signals² for the purpose of the defence of the realm by air³.

The power of a magistrates' court to authorise the stopping up or diversion of a highway⁴ may be exercised in relation to a footpath⁵ on the ground that it crosses or runs inconveniently or dangerously near to land leased under the Military Lands Acts 1892 to 1903⁶, or the use of which can be regulated by byelaws under the Military Lands Acts 1892⁷, if the court is satisfied that a new footpath to be provided, or the old one as diverted, will be convenient to the public⁸.

1 As to the Secretary of State see para 2 ante.

2 'Air signal' means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1).

3 Military Lands Act 1892 s 21; Air Force (Application of Enactments) (No 1) Order 1918, SR & O 1918/538, art 1, Schedule (amended by SR & O 1923/1565; SI 1964/488). The owner is entitled to seven days' notice, and to full compensation, to be determined, in case of dispute, by arbitration (see ARBITRATION vol 2 (2008) PARA 1201 et seq), for any damage caused by the erection, repair or replacement of such marks or signals: Military Lands Act 1892 s 21(a), (b) (s 21(b) amended by the Arbitration Act 1996 s 107(2), Sch 4). Any person refusing such entry or obstructing such works or destroying, displacing or damaging such marks or signals is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Military Lands Act 1892 s 21(c) (amended by virtue of the Criminal Law Act 1977 s 31(5), (6); and the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see para 40 note 4 ante.

4 Ie under the Highways Act 1980 s 116 (as amended): see HIGHWAYS, STREETS AND BRIDGES.

5 'Footpath' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES): Military Lands Act 1892 s 13 (substituted by the Highways Act 1959 ss 309, 313(3), Sch 22; and the London Government Act 1963 ss 16(2), 93(1), Sch 18 Pt II; and amended by the Highways Act 1980 ss 340(1)(b), 343(2), Sch 24 para 1(a); and the Statute Law (Repeals) Act 1993).

6 Ie under the Military Lands Act 1892 s 10 (as amended) or s 11 (as amended), or the Military Lands Act 1900 s 1 (as amended): see para 119 ante.

7 Ie under the Military Lands Act 1892 s 14 or s 16 (as amended): see para 124 post.

8 See ibid s 13 (as substituted and amended: see note 5 supra), s 16(2) (amended by the Highways Act 1959 Sch 22; the London Government Act 1963 Sch 18 Pt II; and the Highways Act 1980 Sch 24 para 1(b)). See also HIGHWAYS, STREETS AND BRIDGES.

UPDATE

123 Entry on land for defence purposes; stopping up and diversion of footpaths

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced:
Armed Forces Act 2006.

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124. Making of byelaws.

Where land¹ belonging to a Secretary of State² or to an association³ is appropriated or used for naval, military or air force purposes⁴, the Secretary of State may make byelaws for regulating the use of the land and securing the public from danger, but no right of common may be taken away or prejudicially affected by the byelaw⁵. Byelaws may also be made in relation to any sea or tidal water on which any such land⁶ abuts, or in relation to any sea, tidal water or shore over which firing practice can be carried on from such land, as if the area in question were part of the land⁷. This power to make byelaws may also be exercised in relation to any such area, whether or not it abuts on or is subject to firing practice from any land appropriated for defence purposes⁸, provided in this case it lies wholly or partially within United Kingdom territorial waters⁹, if the area is used, or is to be used, for naval, military or air force purposes by a Secretary of State to whom it appears to be expedient to make provisions for regulating its use for those purposes or for securing the public from danger¹⁰.

The powers to make byelaws under the Military Lands Acts 1892 and 1900 have been extended to various other purposes in relation to land held for the discharge of their functions by the authorities concerned¹¹.

1 For the meaning of 'land' see para 119 note 1 ante. For the purposes of the Military Lands Act 1892 s 14, 'land belonging to a Secretary of State' means land under the management of a Secretary of State, whether vested in him or in the Crown or in a trustee for him or the Crown; and 'land belonging to an association' means land vested in that association or in a trustee for it: s 14(3). For the interpretation of the scope of the byelaw-making power conferred by s 14(1) see *DPP v John* [1999] 1 WLR 1883, DC; *DPP v Hutchinson* [1990] 2 AC 783, [1990] 2 All ER 836, HL (dealing with rights of common). For the purposes of the Military Lands Act 1892 Pt II (ss 14-18) (as amended), where the provision of dockyard services in a royal dockyard is transferred to a dockyard contractor, the land in the dockyard is to be treated as land under the control or management of the Secretary of State or the Defence Council: Dockyard Services Act 1986 s 3(1)(b) (amended by the Local Government and Rating Act 1997 s 33, Sch 3 para 20(a), Sch 4). Similarly, land in designated premises used by a contractor under the Atomic Weapons Establishment Act 1991 s 1 is to be treated as land under the management of the Secretary of State for military purposes: s 3, Schedule para 2. As to the Secretary of State and the Defence Council see para 2 ante.

2 As to the extension to other authorities of the power to make byelaws under the Military Lands Acts 1892 and 1900 see note 11 infra.

3 See para 119 note 7 ante.

4 For the meanings of 'military purposes' and 'air force purposes' see para 119 note 5 ante. As to visiting forces and international headquarters see para 119 note 6 ante. Land is appropriated for military purposes when it is set aside or allocated to such a purpose, despite the fact that it may not currently be in military use: *DPP v John* [1999] 1 WLR 1883, DC.

5 See the Military Lands Act 1892 ss 14, 15 (as applied and modified: see para 119 notes 5, 8 ante). Additionally, the purposes for which the Secretary of State may take, purchase or use land, or rights in or over land, under the Defence Acts 1842 to 1935 or the Lands Clauses Consolidation Acts Amendment Act 1860 s 7 (see para 125 post), include any purpose of his department, and the power to make byelaws under the Military Lands Act 1892 ss 14, 15 applies to land under the management of the Secretary of State as if any such purpose were a military purpose within the meaning of Pt II (as amended): Defence (Transfer of Functions) Act 1964 s 2(3). See also *DPP v Hutchinson* [1990] 2 AC 783, [1990] 2 All ER 836, HL.

Where the land is not vested in the Secretary of State or an association, a byelaw may not injuriously affect the private rights of any person otherwise than is authorised by the grant of the right to use the land (Military Lands Act 1892 s 15) or, in the case of land on lease, may not be inconsistent with any term of the lease (s 18). See also para 123 ante. A byelaw may not interfere with any highway without the consent of the local highway

authority, which may, however, agree to a byelaw which temporarily diverts, or restricts the use of, any highway crossing or running dangerously or inconveniently near any land appropriated or used for naval, military or air force purposes: see s 16(1); and HIGHWAYS, STREETS AND BRIDGES. Any byelaw in force on 10 December 1950 which was made under the Defence (General) Regulations 1939, SR & O 1939/927, reg 52(2), affecting rights of common remains valid, notwithstanding the revocation of that regulation: Defence Regulations (No 9) Order 1950, SI 1950/1964, art 1. Notice of proposed byelaws must be given: see the Military Lands Act 1892 s 17(1). An offence created by such a byelaw is punishable by a fine not exceeding level 2 on the standard scale: see s 17(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 39, 46, Sch 3 Pt I). As to the standard scale see para 40 note 4 ante. As to rights of common see COMMONS vol 13 (2009) PARA 402 et seq.

6 le land the use of which can be regulated by byelaws under the Military Lands Act 1892 ss 14, 15.

7 Military Lands Act 1900 s 2(2). The authority exercising this power is primarily the Secretary of State for Defence (see para 2 ante), but as to the extension of the power to other authorities see note 11 infra. Persons injuriously affected, or whose private rights are disturbed, by byelaws made under s 2(2) are entitled to compensation to be assessed by the Lands Tribunal: see s 2(2) proviso (a). As to the general rules for the assessment of compensation see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 753 et seq. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq. Any byelaw in relation to any sea, tidal water or shore which injuriously affects a public right of navigation, anchoring, grounding, fishing, bathing, walking or recreation requires the consent of the Department of Trade and Industry (previously the Board of Trade); before consenting, the board must give notice of the byelaw by advertisement or otherwise in the locality in order that persons interested may have an opportunity of making objections, must consider the objections made and must make any necessary inquiries for ascertaining that the byelaw will not unreasonably interfere with any public right to any greater extent than is necessary for the safety of the public or the exigencies of the purpose for which the areas affected are used: Military Lands Act 1900 s 2(2) proviso (b), (3) (s 2(2) proviso (b) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(2), Sch 1 Pt II). No byelaw may be made in relation to any sea, tidal water or shore vested in the Crown and under the management of the Crown Estate Commissioners without their consent, which they are empowered to give: Military Lands Act 1900 s 2(2) proviso (c) (amended by the Crown Estate Act 1956 s 1; and the Crown Estate Act 1961 s 1). As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) para 280 et seq.

8 For the meaning of 'defence purposes' see para 110 note 1 ante.

9 As to the extent of United Kingdom territorial waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 124-126; WATER AND WATERWAYS vol 100 (2009) PARA 31.

10 Land Powers (Defence) Act 1958 s 7 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I; and the Ministry of Aviation Supply (Dissolution) Order 1971, SI 1971/719, art 3(2), Schedule para 5).

11 For example, the Secretary of State has power to make byelaws in relation to land vested in, or under the management of, the United Kingdom Atomic Energy Authority for the purposes of that authority: see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1575.

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125. Acquisition for defence and barracks.

Under the Defence Acts¹, lands² may be purchased³ or taken on lease⁴ by the Secretary of State for Defence⁵ for any purpose of his department or of Her Majesty's naval, military or air forces⁶. These powers may be exercised for the purposes of any visiting force or headquarters⁷. The powers and provisions contained in the Lands Clauses Acts may be used for the purposes of such acquisitions⁸. The Secretary of State has power to sell or otherwise dispose of any land vested in him⁹, and the Defence Acts also confer various subsidiary powers¹⁰. Disputes as to compensation must be settled by the Lands Tribunal¹¹. The Secretary of State is exempted from any personal liability in respect of transactions entered into by him under the Defence Acts¹².

The powers conferred by the Defence Acts and the Lands Clauses Acts¹³, and which have devolved upon the Secretary of State for Defence¹⁴, have also been extended to other authorities¹⁵.

1 Formerly, the following Acts could be cited by the collective title of the Defence Acts 1842 to 1935: the Defence Act 1842; the Defence Act 1865; the Defence Acts Amendment Act 1873; and the Defence (Barracks) Act 1935; see s 2. However, since the repeal of the last-mentioned Act by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 3, Sch 2, only the six Defence Acts of 1842 to 1873 may be cited collectively by the title the Defence Acts 1842 to 1873: see the Short Titles Act 1896 s 2, Sch 2. For the purposes of the Requisitioned Land and War Works Acts 1945 and 1948, 'the Defence Acts' means (since the repeal of the Defence (Barracks) Act 1935) the Acts mentioned above, as amended, extended or applied by or under any enactment, and includes the Lands Clauses Consolidation Acts Amendment Act 1860 s 7 and the Militia (Lands and Buildings) Act 1873 s 7 (as amended): see the Requisitioned Land and War Works Act 1945 s 59(1); and the Requisitioned Land and War Works Act 1948 s 20(2), (3). The Defence Acts Amendment Act 1864 is not among the Acts which can be collectively cited as the Defence Acts 1842 to 1873. As to the scope and purpose of the Defence Acts (which to some extent overlap with the Military Lands Acts 1892 to 1903: see paras 119-124 ante) see *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508 at 550-554, HL, per Lord Moulton, where it was held that those Acts have the effect of abridging the prerogatives of the Crown (or superseding their exercise) to take land for defence purposes, so far as the powers conferred by statute apply.

2 Le messuages, lands, tenements and hereditaments of any tenure: Defence Act 1860 s 47. Cf *Marten v Secretary of State for Air* (1959) 10 P & CR 390 (affd (1960) 11 P & CR 13, CA), where it was held that the benefit of a restrictive covenant is not an interest in land which can be acquired under the Defence Acts; and see also *Marten v Flight Refuelling Ltd* [1962] Ch 115, [1961] 2 All ER 969, where the restrictive covenant in issue in the earlier case was enforceable by injunction after compulsory acquisition, except as to the continuation of a use adopted when the land was under requisition. For the corresponding power to extinguish or modify easements see the Requisitioned Land and War Works Act 1948 s 4(2), (3) (s 4(2) amended by the Statute Law (Repeals) Act 1973). The Secretary of State (see para 2 ante) may, in default of agreement, confer on himself by deed poll any easement or right restrictive of the user of any land, which easement or right he would have the power to acquire under these provisions: see the Requisitioned Land and War Works Act 1945 ss 36, 37. The surface of any land may be acquired without the minerals or subjacent strata: s 34(1) (amended by the Statute Law (Repeals) Act 1973; and the Coal Industry Act 1994 s 67, Sch 9 para 2). The power to acquire or extinguish easements or restrictive rights, under the Defence Acts, was extended, where the agreement, notice to treat, or order had been made or served before the expiration of two years from 31 December 1958, to land affected by government war works or damaged by government war use: see the Requisitioned Land and War Works Act 1945 ss 4-14 (repealed); the Requisitioned Land and War Works Act 1948 s 1(1) (repealed); and the Land Powers (Defence) Act 1958 s 1(2). These extended powers applied (see the Requisitioned Land and War Works Act 1945 s 4(2) (repealed)) to the authorities already having power to acquire land under the Defence Acts (see notes 5, 15 infra) and to others whose functions have since been suspended or transferred. The Land Powers (Defence) Act 1958 s 13, Sch 2 (as amended) (see para 103 ante) has created a permanent power to acquire, by agreement or compulsorily, land required for the construction of oil installations essential for the defence of the realm, and land on or under which are oil installations which were formerly government war works for the purposes of the Requisitioned Land and War Works Act 1945 Pt II (ss 4-14) (repealed), together with easements over, and rights restrictive of the user of, other land which are essential to the full enjoyment of land on or under which are, or are to be constructed, such oil installations: see

the Land Powers (Defence) Act 1958 ss 14-18A (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) paras 528-529.

3 As to the safeguards which apply where land is proposed to be purchased compulsorily for defence purposes see para 119 note 3 ante.

4 Where the Secretary of State is in possession of any land under a lease or tenancy, any reversionary interest may be acquired: Requisitioned Land and War Works Act 1945 s 34(2) (amended by the Statute Law (Repeals) Act 1973).

5 He as the successor to the Principal Officers of Ordnance (see the Defence Act 1842 ss 5, 9 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision (No 2) Act 1890)) through the Secretary of State for War, the Admiralty and the Secretary of State for Air, under enactments now repealed or superseded by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488. See also para 2 ante. The Defence Acts apply for the management, use and disposal of all land in the United Kingdom which by the Defence (Transfer of Functions) Act 1964 s 2(2) (as amended), vests in the Secretary of State for Defence, as if it had been acquired by him under those Acts, but this does not apply to alter the purposes for which land is held under any enactment relating specially to it, or any restrictions, stipulations or rights of redemption arising under any enactment or under the Lands Clauses Acts: Defence (Transfer of Functions) Act 1964 s 2(4). As to his power to dispose of land see the text and note 9 infra. As to the meaning of 'United Kingdom' see para 20 note 1 ante. The effect of these provisions is that the Secretary of State for Defence has acquired and retains all the property, and all rights and liabilities in respect of it, of the former service authorities, and that in the management, use and disposal by him of all land acquired by those authorities all the provisions of the Defence Acts apply as if all such land had been acquired by him under those Acts. The Admiralty, in particular, had extensive powers to acquire land by agreement for Her Majesty's naval service or for the use of any force or department in its employment or under its control, under the Admiralty Lands and Works Act 1864 s 3 (repealed); for the purposes of such acquisitions the Lands Clauses Acts were incorporated, so far as they apply to the acquisition of land by agreement: see the Admiralty Lands and Works Act 1864 s 4 (repealed). The Admiralty could also acquire land compulsorily under special Acts for particular purposes: see the Admiralty (Signal Stations) Act 1815 (repealed); and the Naval Works Act 1895 s 2 (repealed). For these purposes also the Lands Clauses Acts were incorporated: Admiralty Lands and Works Act 1864 s 5 (repealed). Land acquired by virtue of these powers vested in the Commissioners for the Admiralty for the time being, in trust for the Crown for the public service: Admiralty Lands and Works Act 1864 s 9 (repealed); and see the Defence Act Amendment Act 1864 s 4 (repealed). The Admiralty also had powers to dispose of surplus land: Admiralty Lands and Works Act 1864 ss 14-19 (repealed). As to the Lands Clauses Acts see para 120 note 1 ante; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq. The powers of requisitioning land for defence purposes, formerly conferred by the Defence (General) Regulations 1939, SR & O 1939/927, regs 51, 52, have been revoked.

The land and other property vested in the Secretary of State for Defence includes all the land, barracks, storehouses, and other buildings purchased or otherwise acquired by the Secretary of State for War under the Military Forces Localisation Act 1872 (partially repealed and otherwise spent), and also land etc acquired by the former Minister of Supply (or by his successor the Minister of Aviation Supply) by virtue of the application to him of the powers of acquisition conferred by the Defence Acts and the Lands Clauses Consolidation Acts Amendment Act 1860 s 7: see the Ministry of Aviation Supply (Dissolution) Order 1971, SI 1971/719, art 2(2); the Supply Powers Act 1975 s 2, Sch 1 Pt I; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 441-442.

As to other authorities to whom powers of acquisition under the Defence Acts have been extended see note 15 infra.

6 Defence Act 1842 s 9 (amended by the Statute Law Revision Act 1874 (No 2); the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision (No 2) Act 1890); Ordnance Board Transfer Act 1855 ss 1, 2, 4 (ss 1, 4 amended, and s 2 repealed for certain purposes, but without prejudice to others by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488); Lands Clauses Consolidation Acts Amendment Act 1860 s 7; Defence (Transfer of Functions) Act 1964 s 2(3). Where the Secretary of State proposes to acquire any land under the Defence Acts, he may also acquire, by agreement, under those Acts any other land with a view to exchanging it for all or any of the first-mentioned land: Requisitioned Land and War Works Act 1945 s 53(1). Unless an enemy has actually invaded the United Kingdom, the consent of the Lord Lieutenant and a Treasury Warrant are required for compulsory purchase under these powers: see the Defence Act 1842 s 23 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision (No 2) Act 1890). The granting of a certificate by the Lord Lieutenant under this provision is an administrative and not a judicial act, and it is not necessary that the person whose land is to be acquired should be heard: *Hutton v A-G* [1927] 1 Ch 427. The Defence Act 1842 s 23 (as amended) is expressly excluded by certain enactments which extend the general application of the Defence Acts: see the Requisitioned Land and War Works Act 1945 s 32(1), Schedule (amended by the Statute Law (Repeals) Act 1993); and the Land Powers (Defence) Act 1958 s 13, Sch 2 para 13(a)).

7 See the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 5, Sch 3; and paras 142, 150 post.

8 See the Lands Clauses Consolidation Acts Amendment Act 1860; and the Defence Act 1854 s 1.

9 Defence Act 1842 ss 12-15 (amended by the Statute Law Revision (No 2) Act 1888, the Statute Law Revision Act 1890, and the Statute Law (Repeals) Act 1969). A sale by the service authorities under the Defence Act 1842 does not, despite the provisions of s 14 (as amended), have the effect of extinguishing public rights of way, for the context of the words 'rights' and 'incumbrances' in that provision indicate that they refer only to private and not to public rights: *Shonleigh Nominees v A-G at the relation of Hampshire County Council* [1974] 1 All ER 734, [1974] 1 WLR 305, HL.

10 These include certain powers of stopping up or diverting footpaths, highways etc (see the Defence Act 1842 ss 16, 17 (amended by the Statute Law Revision (No 2) Act 1888); and the Defence Act 1860 ss 40, 41); power to extinguish rights of common over land purchased under the Defence Act 1842 (see the Defence Act 1854 s 1); power to require certain land, designated on or before 31 August 1861 to be kept free from buildings (see the Defence Act 1860 ss 34, 35 (s 34 amended by the Statute Law (Repeals) Act 1993); and the Defence Act 1865 s 1).

11 Land Compensation Act 1961 s 1. Consequently, the provisions as to putting the Secretary of State or his representative in possession of land purchased, and the assessment of compensation by a jury, contained in the Defence Act 1842 s 19 (as amended), are now superseded. As to the Lands Tribunal and its procedure see para 122 note 10 ante; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

12 Nothing in the Defence Act 1842, or contained in any instrument authorised under that Act, extends to charge the Secretary of State or his personal representatives, or his or their own land or other property, with or for the performances of any agreement contained in any such instrument; and nor is he personally, or his property, liable to any legal process or execution in any legal proceedings under the Act: s 37 (amended by the Statute Law Revision (No 2) Act 1888).

13 See notes 6-8 supra.

14 See note 5 supra.

15 Eg the powers conferred by the Transfer of Functions (Medical Supplies) Order 1947, SR & O 1947/2472, art 4(1), on the then Minister of Health to acquire land under the Defence Acts for the purposes of his functions as to various medical supplies.

UPDATE

125 Acquisition for defence and barracks

NOTE 1--Requisitioned Land and War Works Act 1945 s 59(1) amended: SI 2009/1307.

TEXT AND NOTE 11--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Compensation Act 1961 s 1 (amended by SI 2009/1307).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/A. BILLETING/126. Authority for billeting.

(vi) Billeting; Requisitioning of Vehicles

A. BILLETING

126. Authority for billeting.

'To billet'¹ means to require an occupier of a certain kind of premises to provide accommodation in them as quarters for members of Her Majesty's forces or their vehicles². Provisions empowering the proper authorities³ of the regular forces or of the regular air force to issue billeting requisitions are contained in the Army Act 1955⁴ and the Air Force Act 1955⁵, but these provisions do not have effect until, on it appearing to the Secretary of State⁶ that the public interest so requires, he makes an order directing that the provisions are to come into operation⁷. Such an order has the immediate effect of bringing into operation the provisions specified in it⁸, and it remains in effect (subject to any revocation or variation of it) for one month, but may be extended, for such further period as may be specified, by a resolution of each House of Parliament declaring that the extension is required in the public interest⁹. While the billeting provisions specified in the order are in operation, no enactment prohibiting, restricting or regulating billeting in the United Kingdom¹⁰ applies to any billeting in pursuance of a billeting requisition¹¹.

Similar powers are available to the naval authorities so long as the billeting provisions of the Army Act 1955 are in operation¹².

1 'Billeting' and 'to billet' are not defined by statute, but the definition here suggested expresses the sense in which 'to billet' is used in the service discipline Acts. As to the billeting of vehicles elsewhere than in premises see para 127 text and note 11 post. The 'billet' was originally the written order requiring a person to furnish accommodation, but now denotes the accommodation itself.

2 See the Army Act 1955 ss 154, 158(1), (2); and the Air Force Act 1955 ss 154, 158(1), (2) (the Army Act 1955 s 158(1) and the Air Force Act 1955 s 158(1) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). The billeting provisions of the Army Act 1955, with the exception of those which relate only to mechanically propelled vehicles and trailers normally drawn by them, apply to horses and mules, food, forage and stores as they apply to vehicles (s 172(1)), and the billeting provisions of the Air Force Act 1955 apply to aircraft and stores as they apply to vehicles, except that the provisions relating only to mechanically propelled vehicles and trailers normally drawn by them do not apply to stores (s 172(1)). For this purpose, in the Army Act 1955, 'stores' means any chattel, other than a horse or mule, a vehicle, food or forage, being a chattel required in connection with billeting (see s 172(5)); and in the Air Force Act 1955, 'stores' means any chattel, other than a vehicle or aircraft, being a chattel required in connection with billeting (see s 172(4)). References in the Army Act 1955 ss 172, 173 (as amended), and in the Air Force Act 1955 s 173 (as amended), to motor vehicles, or activities or places connected with them, include references to hovercraft or activities or places connected with them: see the Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 6, Sch 3. As to hovercraft see generally SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381 et seq.

3 As to these authorities see para 127 post.

4 See the Army Act 1955 s 154.

5 See the Air Force Act 1955 s 154.

6 As to the Secretary of State see para 2 ante.

7 Army Act 1955 s 174(1); Air Force Act 1955 s 174(1). The order may direct that the billeting provisions are to come into operation either generally or as respects such area in the United Kingdom as may be specified in the order: Army Act 1955 s 174(1); Air Force Act 1955 s 174(1). As to the meaning of 'United Kingdom' see para

20 notes 1-2 ante. The order is required to be made by statutory instrument: Army Act 1955 s 175(2); Air Force Act 1955 s 175(2). As to the exercise of statutory powers see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 19.

8 Army Act 1955 s 174(1); Air Force Act 1955 s 174(1). The fact that the provisions specified in the order have been brought into operation must be reported by the Secretary of State to Parliament as soon as possible: Army Act 1955 s 174(2); Air Force Act 1955 s 174(2).

9 Army Act 1955 s 174(3); Air Force Act 1955 s 174(3). Any further extension must be authorised by the same method: see the Army Act 1955 s 174(3) proviso; Air Force Act 1955 s 174(3) proviso.

10 See eg the Petition of Right (1627) ss 6, 8; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 882.

11 Army Act 1955 s 164; Air Force Act 1955 s 164.

12 See the Armed Forces Act 1971 s 67(1); and para 127 post. The provisions relating to the billeting of the Royal Marines (who are subject to military law by the Army Act 1955 s 210(3) (as amended): see para 309 post) are also applicable to men of the reserve forces during such time as they attend training or are in permanent service or full-time service under a full-time service commitment: Reserve Forces Act 1996 s 123(1). Provision is also made in connection with the billeting of men of the reserve naval and marine forces: s 123(2). As to the reserve forces see para 223 et seq post; as to the naval reserve forces see para 173 et seq post; and as to the reserve marine forces see para 189 post.

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

126 Authority for billeting

NOTE 12--Reserve Forces Act 1996 s 123 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/A. BILLETING/127. Billeting procedure.

127. Billeting procedure.

When the billeting provisions of the Army Act 1955 or the Air Force Act 1955 have been brought into operation¹, the authority empowered to issue a billeting requisition is any general or field officer commanding any part of the regular forces² in the United Kingdom³, or any officer not below the rank of squadron leader commanding any part of the regular air force⁴ in the United Kingdom, as the case may be⁵. Further, whenever the billeting provisions of the Army Act 1955 are in operation, a billeting requisition may be issued by any flag officer having a command in the United Kingdom⁶.

A billeting requisition requires the chief officer of police for any area in the United Kingdom specified in it to provide billets at specified places in that area for specified numbers of Her Majesty's forces, certain civilians⁷ and (if the requisition so provides) vehicles⁸. Billets, other than for vehicles, provided in pursuance of such a requisition may only be: (1) in an inn, hotel or certain similar premises⁹; or (2) in any other building to which the public habitually has access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of rates¹⁰; or (3) in any dwelling, outhouse, warehouse, barn or stables¹¹. Billets for vehicles may be provided in any building or on any land¹². On the production of a billeting requisition by any officer commanding any portion of the regular forces or of the regular air force, or any officer, soldier or airman¹³ authorised in writing by such an officer, the chief officer of police¹⁴ of the area specified in the requisition must billet on the occupiers of premises liable to billeting such numbers of persons and vehicles, not exceeding the number specified in the requisition, as the person producing it may require, for such period as may be required¹⁵. In carrying out this duty, the chief officer of police or his representative is required to exercise his functions in such a manner as will, in his opinion, cause least hardship to persons on whom billeting may take place¹⁶.

A local authority¹⁷ may make a scheme for the provision of billets in its area, and where such a scheme is in force the chief officer of police must exercise his functions as to billeting in accordance with the scheme¹⁸.

Any person who is aggrieved by having an undue number of person billeted on him, or claims that by reason of special circumstances he should be exempted from having any persons billeted upon him, may apply to a person or persons appointed by the local authority¹⁹. The person or persons to whom such an application is made may direct the billeting elsewhere of such number of the persons billeted on the applicant as may seem just, or may grant the exemption sought, or may dismiss the application²⁰. However, pending the determination of such an application, the billeting is not affected by it²¹.

1 le by an order of the Secretary of State under the Army Act 1955 s 174(1) or the Air Force Act 1955 s 174(1): see para 126 ante. As to the Secretary of State see para 2 ante.

2 For the meaning of 'regular forces' see para 191 post.

3 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

4 For the meaning of 'regular air force' see para 206 post.

5 Army Act 1955 s 154; Air Force Act 1955 s 154. This power does not extend to the Channel Islands or the Isle of Man: Army Act 1955 s 216(2); Air Force Act 1955 s 214(2).

6 Armed Forces Act 1971 s 67(1). A billeting requisition so made has effect as if issued under the Army Act 1955 s 154, but Pt IV (ss 154-176) (as amended) and Sch 4 (as amended) have effect in relation to any such requisition, subject to such adaptations as may be prescribed by regulations of the Defence Council as being necessary for adapting those provisions to the naval forces: Armed Forces Act 1971 s 67(2). Defence Council regulations are not statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante. Any power which may be exercised by any colonel, commandant, or commanding officer of any division of the Royal Marines may be exercised in relation to the reserve naval and marine forces by an officer of the Royal Navy of the rank of commander or any higher rank, authorised by orders or regulations made under the Reserve Forces Act 1996 s 4: s 123(2).

7 In such persons employed with any body of the regular forces or regular air force as may be prescribed by regulations of the Defence Council: Army Act 1955 s 162; Air Force Act 1955 s 162 (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

8 Army Act 1955 ss 154, 162; Air Force Act 1955 ss 154, 162. As to vehicles see para 126 note 2 ante. The class of vehicles must be specified in the requisition: Army Act 1955 s 154; Air Force Act 1955 s 154.

9 Army Act 1955 s 155(1)(a); Air Force Act 1955 s 155(1)(a). The similar premises referred to in the text are any premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward: see the Army Act 1955 s 155(1)(a); and the Air Force Act 1955 s 155(1)(a).

10 Army Act 1955 s 155(1)(b); Air Force Act 1955 s 155(1)(b).

11 Army Act 1955 s 155(1)(c); Air Force Act 1955 s 155(1)(c).

12 Army Act 1955 s 155(2); Air Force Act 1955 s 155(2). Where vehicles are billeted, the occupier of the premises must furnish standing room for them: Army Act 1955 s 158(2); Air Force Act 1955 s 158(2). See also para 129 note 3 post.

13 References to soldiers and airmen include references to warrant officers and non-commissioned officers: Army Act 1955 s 176; Air Force Act 1955 s 176.

14 The chief officer may delegate his functions to any constable, or constables of any class: see the Army Act 1955 s 156(3); and the Air Force Act 1955 s 156(3). As to the meaning of 'constable' see para 48 note 8 ante.

15 Army Act 1955 s 156(1); Air Force Act 1955 s 156(1). The person producing the requisition may specify the premises at which the billeting is to take place: Army Act 1955 s 156(1); Air Force Act 1955 s 156(1). Billeting may only continue so long as the Army Act 1955 s 154 or the Air Force Act 1955 s 154 continues in operation: Army Act 1955 s 158(3); Air Force Act 1955 s 158(3). The occupier of the premises, or, where there is no occupier, the person entitled to possession of them, must furnish such accommodation (including meals) as the officer or soldier demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations of the Defence Council made with Treasury consent: Army Act 1955 s 158(1), (7); Air Force Act 1955 s 158(1), (7) (the Army Act 1955 s 158(1) and the Air Force Act 1955 s 158(1) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. The allotment of billets may be varied from time to time: Army Act 1955 s 158(3); Air Force Act 1955 s 158(3).

16 Army Act 1955 s 156(2); Air Force Act 1955 s 156(2).

17 'Local authority' means the council of a district or borough or the Common Council of the City of London: Army Act 1955 s 163 (amended by the Statute Law (Repeals) Act 1976); Air Force Act 1955 s 163 (amended by the Statute Law (Repeals) Act 1976); London Government Act 1963 s 4(2); Local Government Act 1972 ss 1(11), 179(3). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

18 Army Act 1955 s 157(1); Air Force Act 1955 s 157(1). The chief officer of police for the relevant area must be provided with a copy of the scheme: Army Act 1955 s 157(3); Air Force Act 1955 s 157(3). The scheme must be approved by the Secretary of State for the Environment, Food and Rural Affairs (previously the Minister of Housing and Local Government) (see the Army Act 1955 s 157(4); and the Air Force Act 1955 s 157(4)), and may be revoked or varied (Army Act 1955 s 157(2); Air Force Act 1955 s 157(2)). It is not clear whether, if such a scheme is in operation, the person producing the billeting requisition may specify the premises he requires: cf note 15 supra.

19 Army Act 1955 s 159(1); Air Force Act 1955 s 159(1).

20 Army Act 1955 s 159(2), (3); Air Force Act 1955 s 159(2), (3).

21 Army Act 1955 s 159(4); Air Force Act 1955 s 159(4).

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

127 Billeting procedure

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 6--Armed Forces Act 1971 s 67 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/A. BILLETING/128. Billeting offences.

128. Billeting offences.

A person¹ who:

- 22 (1) refuses to receive any person billeted upon him in pursuance of a billeting requisition, or without reasonable excuse fails to furnish him with the accommodation properly required for him;
- 23 (2) gives, or agrees to give, to any person so billeted upon him any money or reward in lieu of receiving any person or vehicle or of furnishing accommodation properly required for him; or
- 24 (3) obstructs the billeting in his building or on his land of any vehicle,

is guilty of an offence².

1 This paragraph relates to offences in connection with billeting which may be committed by members of the public. As to billeting offences which may be committed by persons subject to naval discipline or to military or air force law see para 408 post.

2 Army Act 1955 s 161; Air Force Act 1955 s 161. A person guilty of any of these offences is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding three months, or to both: Army Act 1955 s 161; Air Force Act 1955 s 161 (both amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see para 40 note 4 ante. In so far as these offences relate to vehicles, the Army Act 1955 s 161 applies equally to horses and mules, food, forage and stores (see s 172(1)); and the Air Force Act 1955 s 161 applies equally to aircraft and stores (see s 172(1)). See also para 126 note 2 ante.

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/A. BILLETING/129. Right to payment for billeting.

129. Right to payment for billeting.

The occupier¹ on whose premises any person or vehicle is billeted² is entitled to payment for the billeting³. The payment must be made before the accommodation is finally vacated and, if the billeting continues for more than seven days, at least once in every seven days⁴. If any damage⁵ is caused to any premises through billeting, the occupier or, if there is no occupier, the person entitled to possession of the premises may recover compensation from the Defence Council for any resulting depreciation in the value of the premises⁶.

1 In relation to premises of which there is no occupier, the Army Act 1955 s 158(1)-(6) (as amended), and the Air Force Act 1955 s 158(1)-(6) (as amended), apply as if the person entitled to possession were the occupier: Army Act 1955 s 158(7); Air Force Act 1955 s 158(7).

2 Ie pursuant to the statutory procedure for requisitioning billets: see para 127 ante.

3 Army Act 1955 s 158(4); Air Force Act 1955 s 158(4). The rate of payment is that prescribed by regulations of the Defence Council made with Treasury consent: Army Act 1955 s 158(4); Air Force Act 1955 s 158(4) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Defence Council regulations are not statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

There is no right to payment in respect of vehicles which are billeted otherwise than in a building unless the land on which they are billeted: (1) has its surface made up for the passage or parking of vehicles; and (2) is not land where vehicles are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven: Army Act 1955 s 158(4) proviso; Air Force Act 1955 s 158(4) proviso.

4 Army Act 1955 s 158(5); Air Force Act 1955 s 158(5). If payment cannot be so made, the occupier may present his account, in the form prescribed by the Defence Council, to the appropriate local authority, who must pay the amount due and recover it from the Defence Council: Army Act 1955 s 158(6); Air Force Act 1955 s 158(6) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). For the meaning of 'local authority' see para 127 note 17 ante.

5 'Damage' includes destruction, and references to damaging are to be construed accordingly: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1) (definition added by the Armed Forces Act 1971 s 43, Sch 1 para 2(1), (5)(b)).

6 Army Act 1955 s 160(1); Air Force Act 1955 s 160(1) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). A county court has jurisdiction to deal with such claims, irrespective of the amount claimed: Army Act 1955 s 160(3); Air Force Act 1955 s 160(3). Any other person with an interest in the premises, being an interest the value of which is depreciated by the damage may recover from the recipient of the compensation paid by the Defence Council such part of the compensation as may be just: Army Act 1955 s 160(2); Air Force Act 1955 s 160(2). Contribution towards such compensation may be deducted from the pay of persons who were billeted on the premises: see para 218 text and notes 1-3 post. As to the offences of wilfully, or by wilful neglect, damaging premises in which a person is billeted, committed by any person subject to the Naval Discipline Act 1957 or to military or air force law see para 408 post.

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/B. REQUISITIONING OF VEHICLES/130. Issue of requisitioning orders.

B. REQUISITIONING OF VEHICLES

130. Issue of requisitioning orders.

Provisions, similar to those relating to billeting¹, are contained in the Army Act 1955 and the Air Force Act 1955 empowering the proper authorities of the regular forces or the regular air force² to issue requisitioning orders authorising the requisitioning of vehicles³ for meeting the needs of Her Majesty's forces⁴. These provisions, like those as to billeting, cannot be applied until the Secretary of State⁵, on its appearing to him that the public interest so requires⁶, has made an order directing that the provisions in one or other, or both, of those Acts authorising the requisitioning of vehicles are to come into operation⁷. The effect of such an order, the period for which it may remain in effect (if not revoked or varied) and the manner in which an extension of that period may be authorised are the same as for billeting⁸. Similar powers with reference to the requisitioning of vehicles are available to the naval authorities so long as the requisitioning provisions of the Army Act 1955 are in operation⁹.

When the requisitioning provisions of the Army Act 1955 or the Air Force Act 1955 have been brought into operation, the authorities empowered to issue requisitioning orders are the same as those who may similarly be authorised to issue billeting requisitions under the corresponding provisions of either of those Acts relating to billeting¹⁰. Whenever the requisitioning provisions of the Army Act 1955 are in operation, a requisitioning order may be issued by any flag officer holding a command in the United Kingdom¹¹.

A requisitioning order may be issued to the officer commanding any portion of the regular forces or of the regular air force, as the case may be¹², and authorises him to requisition vehicles of such number and description as may be specified in the order, from among vehicles in any area in the United Kingdom also so specified¹³. The officer to whom the order is issued may then direct¹⁴ any person having possession of any such vehicles as are within the order, and which he wishes to requisition¹⁵, to furnish them¹⁶. If the officer to whom the requisitioning order was issued, or any officer, soldier or airman authorised by him in writing, is satisfied either that the person in possession of such a vehicle has refused or neglected to furnish it in accordance with the direction, or has reasonable grounds for believing¹⁷ that it is not practicable without undue delay to give a direction to that person, he may take possession of the vehicle, or authorise any officer, soldier or airman to do so¹⁸. Any person who is required to furnish a vehicle must notify any other person whom he knows to have an interest in the vehicle that it has been requisitioned¹⁹.

1 As to billeting see paras 126-129 ante.

2 As to these authorities, and the position with regard to the naval authorities see the text and notes 10-11 infra. For the meaning of 'regular forces' see para 191 post. For the meaning of 'regular air force' see para 206 post.

3 As to the additional articles which may be requisitioned see para 126 note 2 ante.

4 Army Act 1955 s 165(1), (2); Air Force Act 1955 s 165(1), (2). The requisitioning order must state the purposes for which the vehicles are to be requisitioned, and these must be purposes for meeting the needs of any of Her Majesty's forces: Army Act 1955 s 165(2); Air Force Act 1955 s 165(2).

5 As to the Secretary of State see para 2 ante.

6 It is submitted that the Secretary of State is the sole judge of whether the public interest does so require, and that his decision cannot be questioned in the courts: see para 126 note 7 ante.

7 Army Act 1955 s 174(1); Air Force Act 1955 s 174(1). Any such order must be made by statutory instrument, as must also any regulations made under the powers conferred by the requisitioning provisions of the Army Act 1955 and the Air Force Act 1955: see the Army Act 1955 s 175; and the Air Force Act 1955 s 175. The order may bring the requisitioning provisions of one or the other or both of the two Acts into operation either generally or as respects such area in the United Kingdom as may be specified in it; it has immediate effect, and as soon as possible after the provisions to which it relates have been brought into operation, that fact must be reported to Parliament: Army Act 1955 s 174(1), (2); Air Force Act 1955 s 174(1), (2). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

8 See the Army Act 1955 s 174(3); the Air Force Act 1955 s 174(3). See also para 126 text and note 9 ante.

9 See the text and note 11 infra.

10 Army Act 1955 s 165(1); Air Force Act 1955 s 165(1). See para 127 ante.

11 Armed Forces Act 1971 s 67(1). See further para 127 note 6 ante, which is equally applicable to requisitioning orders made by naval flag officers under s 67(1). In order that the provisions as to the requisitioning of vehicles contained in the Army Act 1955 may be capable of practical application by the naval authorities, it would seem to be necessary that regulations adapting those provisions (including those in s 168, Sch 4 (as amended) (see para 133 post)) should be made by the Defence Council pursuant to the Armed Forces Act 1971 s 67(2) (a consideration not applicable to the equivalent provisions as to billeting). As to the Defence Council see para 2 ante.

12 Army Act 1955 s 166(1); Air Force Act 1955 s 166(1).

13 Army Act 1955 s 165(1); Air Force Act 1955 s 165(1).

14 That officer may, in writing, authorise any officer, soldier or airman to give the directions, instead of doing so himself: Army Act 1955 s 166(1); Air Force Act 1955 s 166(1). As to the offence committed by any person subject to naval discipline or to military or air force law who gives directions for the provision of any vehicles, or who orders or procures another person to do so, if he knows that he himself is not authorised to give any such directions see para 408 post.

15 In deciding which vehicles to requisition, the officer or authorised person must act in such manner as will, in his opinion, cause least hardship: Army Act 1955 s 169; Air Force Act 1955 s 169.

16 Army Act 1955 s 166(1); Air Force Act 1955 s 166(1). The direction may be to furnish the vehicle immediately at the place where it is: Army Act 1955 s 166(2)(a); Air Force Act 1955 s 166(2)(a). Alternatively, if the vehicle is mechanically propelled or is a trailer normally drawn by a mechanically propelled vehicle, the direction may be to furnish it, together with any stores required for it and which can be conveyed with it, at any place within 100 miles from the premises of the person in whose possession it is: Army Act 1955 ss 166(2)(b), 172(2); Air Force Act 1955 ss 166(2)(b), 172(2). As to entitlement to compensation where damage to the vehicle or such stores occurs after the direction is given see para 133 post. The person using a vehicle for the purpose of furnishing it in pursuance of a direction to do so at a place other than his own premises is deemed (as respects any claim for injury or damage to any other person or property) to be using the vehicle (which here includes hovercraft: see para 126 note 2 ante) as a servant of the Crown: Army Act 1955 s 173; Air Force Act 1955 s 173. Consequently the Crown may be sued in tort in respect of damage caused by such use of the vehicle: see the Crown Proceedings Act 1947 s 2(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 382; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 103. The requirements of the Road Traffic Act 1988 as to compulsory third-party insurance do not apply to the use of a motor vehicle in such a case: see s 144(2)(d); and ROAD TRAFFIC vol 40(2) (2007 Reissue) para 938. For the purposes of any liability of the Crown for the payment for the purchase or requisitioning of, and for any damage to, such a vehicle, the period of possession of a vehicle being delivered is deemed to begin when the direction to deliver it is given; and if any damage or loss occurs after the direction is given which prevents the furnishing of the vehicle, the provisions for payment apply as if it had been furnished, the period of possession being deemed to end immediately after the occurrence of the damage: Army Act 1955 s 168(3)(a), (4); Air Force Act 1955 s 168(3)(a), (4). Stores which cannot be furnished for similar reasons must similarly be paid for: see the Army Act 1955 s 172(2); and the Air Force Act 1955 s 172(2).

Any expenditure reasonably incurred in complying with the direction is repayable: see the Army Act 1955 s 168(3)(b); the Air Force Act 1955 s 168(3)(b); and para 133 post.

17 It is submitted that there must in fact exist such reasonable grounds and they must be known to the officer, soldier or airman. See further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 21.

18 Army Act 1955 s 166(3); Air Force Act 1955 s 166(3). If requested so to do by the officer receiving the order, the chief officer of police of the area must ensure that, if possible, constables are available to accompany officers or soldiers requisitioning vehicles under the order: Army Act 1955 s 166(4); Air Force Act 1955 s 166(4). A vehicle of which possession is taken is deemed for the purposes of the requisitioning provisions to have been furnished at the place where it is, and, in particular, payment is made as if this were so: Army Act 1955 s 166(3); Air Force Act 1955 s 166(3). Any person subject to the Naval Discipline Act 1957, or to military or air force law, commits an offence if he takes, or orders or procures any other person to take, possession of a vehicle knowing such action to be unauthorised: see para 408 post.

19 Army Act 1955 s 168(5)(a); Air Force Act 1955 s 168(5)(a). Any person interested is entitled to recover from the person by whom the vehicle was required to be furnished such part, if any, of the payment received by the latter for the vehicle as may be just: Army Act 1955 s 168(5)(b); Air Force Act 1955 s 168(5)(b). As to payment and the determination of disputes see para 133 post.

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

130 Issue of requisitioning orders

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 11--Armed Forces Act 1971 s 67 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/B. REQUISITIONING OF VEHICLES/131. Retention of requisitioned vehicles; stores.

131. Retention of requisitioned vehicles; stores.

So long as the power to requisition vehicles remains in operation¹, a vehicle² furnished in pursuance of a requisitioning order may be retained for any period for which it is required for the purpose specified in the requisitioning order or for any other purpose connected with the needs of any of Her Majesty's forces³. Further, while a call out order for permanent service is in force⁴, a person by whom any vehicle is to be furnished in pursuance of a requisitioning order may be required, in so far as the requisitioning order so provides, to furnish it for the purpose of its being purchased by the Crown⁵.

Food, forage or stores⁶ furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase on behalf of the Crown⁷.

1 Ie while the Army Act 1955 s 165 or the Air Force Act 1955 s 165 remains in operation by virtue of an order made by the Secretary of State: see para 130 ante. As to the Secretary of State see para 2 ante.

2 As to the additional articles which may be requisitioned see para 126 note 2 ante.

3 Army Act 1955 s 167(1); Air Force Act 1955 s 167(1).

4 Ie a call out order under the Reserve Forces Act 1996 s 52, authorising the call out for permanent service of members of a reserve force: see para 232 et seq post.

5 Army Act 1955 s 167(2); Air Force Act 1955 s 167(2) (both amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9).

6 For the meaning of 'stores' see para 126 note 2 ante.

7 Army Act 1955 s 172(3); Air Force Act 1955 s 172(3).

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/B. REQUISITIONING OF VEHICLES/132. Offences in connection with the requisitioning of vehicles.

132. Offences in connection with the requisitioning of vehicles.

Any person¹ who fails to furnish a vehicle² in pursuance of a requisitioning order, or who fails to do so at the time and place at which he is directed to furnish it, or who obstructs³ any officer or other person in the exercise of his functions in relation to the requisitioning of vehicles, is guilty of an offence⁴.

1 This paragraph relates to offences in relation to the requisitioning of vehicles which may be committed by members of the public. For a further such offence see para 134 post. As to offences related to requisitioning committed by persons subject to the Naval Discipline Act 1957, or to military or air force law, see para 408 post.

2 As to the additional articles which may be requisitioned see para 126 note 2 ante.

3 The offence of obstruction need not involve the use of physical violence: see eg *Borrow v Howland* (1896) 74 LT 787, DC, where a householder was held to have wilfully obstructed an employee of a sanitary authority in his duty by refusing (without force) to allow him to enter to carry out regular removal of refuse; and cf *Betts v Stevens* [1910] 1 KB 1 at 7, DC, per Lord Alverstone CJ. Doing nothing is not obstruction unless there is a legal duty to act: *Swallow v LCC* [1916] 1 KB 224, DC.

4 Army Act 1955 s 171(1)(a), (c); Air Force Act 1955 s 171(1)(a), (c). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months, or to both: Army Act 1955 s 171(1); Air Force Act 1955 s 171(1) (both amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see para 40 note 4 ante. As to the service offence of taking money, or demanding it, in return for requisitioning directions not being given or possession not being taken see para 408 post.

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/B. REQUISITIONING OF VEHICLES/133. Payment and compensation.

133. Payment and compensation.

Payment for vehicles¹ furnished under a requisitioning order, otherwise than for purchase, must be at the rate commonly recognised or generally prevailing when the vehicle was furnished, or in default of such rate at such rate which may be just². Vehicles furnished for purchase are paid for at their value at the time of furnishing³. A receipt for any vehicle furnished must be sent to the person furnishing it as soon as possible after he has furnished it, specifying the payment offered⁴. Compensation is due for any damage not due to fair wear and tear⁵ to, or total loss of, the vehicle while its possession is retained⁶.

As soon as may be after the end of the period of possession a notice must be sent⁷ to the person who furnished the vehicle stating what damage or loss, if any, there is, and the payment, if any, offered for it⁸. Unless the recipient replies to this notice within three weeks of receiving it, claiming a greater sum in respect of damage or loss than was offered, or stating that the vehicle has sustained damage where the notice stated the contrary, he will be deemed to have accepted any offer contained in the notice, or to have agreed that no damage has occurred, as the case may be⁹. On receiving any such claim, the Defence Council may notify the claimant either that it does not propose to make any further offer, or that it makes a further specified offer¹⁰.

Any dispute as to the payment for retention or damage during retention, irrespective of the amount, is within the jurisdiction of the county court¹¹. An application to a county court¹² for the determination of such a dispute may be made only after the expiration of three weeks after the claimant has claimed a greater specified amount than the service authority offered, unless that authority has notified the claimant of its refusal to make any offer other than the original offer or specified further offer¹³.

Any sum payable for damage occurring after the direction to furnish, which prevented the furnishing of a mechanically propelled vehicle¹⁴ or stores conveyed by and required for such a vehicle¹⁵, becomes due immediately on the claimant making a claim to the appropriate authority, which may require, before payment, reasonable particulars of damage and a reasonable opportunity to inspect the vehicle¹⁶.

1 As to the additional articles which may be requisitioned see para 126 note 2 ante.

2 Army Act 1955 s 168(1)(a); Air Force Act 1955 s 168(1)(a). Subject to any agreement as to payment on account, payment becomes due on the expiration of the period for which the vehicle is retained: Army Act 1955 s 168(6), Sch 4 para 1(1); Air Force Act 1955 s 168(6), Sch 4 para 1(1).

3 Army Act 1955 s 168(2); Air Force Act 1955 s 168(2). Payment becomes due on the furnishing of the vehicle, as does any payment under the Army Act 1955 s 168(3)(b) or the Air Force Act 1955 s 168(3)(b) in respect of the expense of complying with a direction under the Army Act 1955 s 166(2)(b) or the Air Force Act 1955 s 166(2)(b) requiring a vehicle to be furnished at a place other than where it is: Army Act 1955 Sch 4 para 1(2), (3); Air Force Act 1955 Sch 4 para 1(2), (3).

4 Army Act 1955 Sch 4 para 2(1); Air Force Act 1955 Sch 4 para 2(1). The receipt must be sent by such person, and in such form and manner, as may be specified by instructions of the Defence Council: Army Act 1955 Sch 4 para 2(1); Air Force Act 1955 Sch 4 para 2(1) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the Defence Council see para 2 ante. As to the time limit for accepting the offer or demanding a higher payment see the text and note 9 infra.

5 le such as might have been expected to occur but for the fact that the vehicle was requisitioned: Army Act 1955 s 168(1); Air Force Act 1955 s 168(1).

6 Army Act 1955 s 168(1)(b), (c); Air Force Act 1955 s 168(1)(b), (c). Compensation for damage is payable only in so far as the damage has not been made good by any person acting on behalf of the Crown: Army Act 1955 s 168(1)(b); Air Force Act 1955 s 168(1)(b). Where a total loss occurs, the compensation due is the value of the vehicle immediately prior to its loss: Army Act 1955 s 168(1)(c); Air Force Act 1955 s 168(1)(c). Loss ends the period of requisition for the purposes of payment; the claimant cannot claim for the return of the vehicle, if it exists, or payment in respect of its return: Army Act 1955 s 168(7); Air Force Act 1955 s 168(7).

7 As to who must send this notice, and as to its form and the manner of sending it, see the Army Act 1955 Sch 4 para 2(2); the Air Force Act 1955 Sch 4 para 2(2); and note 4 *supra*.

8 Army Act 1955 Sch 4 para 2(2); Air Force Act 1955 Sch 4 para 2(2). In the Army Act 1955 Sch 4 paras 1-5 and the Air Force Act 1955 Sch 4 paras 1-5, the expression 'damage' does not include damage resulting in a total loss, or damage attributable to fair wear and tear: Army Act 1955 Sch 4 para 6; Air Force Act 1955 Sch 4 para 6.

9 Army Act 1955 Sch 4 para 3(1), (2); Air Force Act 1955 Sch 4 para 3(1), (2). The notice must state this time limit and the effect of disregarding it: see the Army Act 1955 Sch 4 paras 4(2), 5; and the Air Force Act 1955 Sch 4 paras 4(2), 5 (all amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). The same rules as to giving notice of a counterclaim, and as to warning a claimant of these requirements, apply to the receipt required to be sent when a vehicle has been furnished (see note 4 *supra*): see the Army Act 1955 Sch 4 para 5; and the Air Force Act 1955 Sch 4 para 5.

10 Army Act 1955 Sch 4 para 3(3); Air Force Act 1955 Sch 4 para 3(3) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

11 Army Act 1955 Sch 4 para 4(1)(a); Air Force Act 1955 Sch 4 para 4(1)(a). The payments referred to are those due under the Army Act 1955 s 168(1), (2) or the Air Force Act 1955 s 168(1), (2); but in addition the county court has a like jurisdiction to determine disputes and claims under the Army Act 1955 ss 168(3)(b), (4), (5), 172(2) proviso or the Air Force Act 1955 ss 168(3)(b), (4), (5), 172(2) proviso (which relate, respectively, to the expense of complying with a direction to furnish a vehicle; to damage to or loss of a vehicle occurring after a direction was given to furnish it at a place other than where it is, and preventing the vehicle being furnished as directed; to any interests of third persons in the vehicle required to be furnished; and to damage to stores directed to be furnished for and with a vehicle directed to be furnished, or to the vehicle itself, preventing the stores from being furnished as directed): see the Army Act 1955 Sch 4 paras 4(1)(b), 8; and the Air Force Act 1955 Sch 4 paras 4(1)(b), 8.

12 The application should be made in accordance with the Civil Procedure Rules 1998, SI 1998/3132: see generally CIVIL PROCEDURE. The proceedings should be brought against the appropriate authorised government department: see the Crown Proceedings Act 1947 s 17(3); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 119.

13 Army Act 1955 Sch 4 para 4(2); Air Force Act 1955 Sch 4 para 4(2).

14 le under the provisions of the Army Act 1955 s 168(4) or of the Air Force Act 1955 s 168(4): see para 130 note 16 *ante*. As to proceedings to recover such a payment see notes 11-12 *supra*.

15 le under the provisions of the Army Act 1955 s 172(2) proviso or of the Air Force Act 1955 s 172(2) proviso: see para 130 note 16 *ante*. As to proceedings to recover such a payment see the text and notes 11-12 *supra*.

16 Army Act 1955 Sch 4 para 7; Air Force Act 1955 Sch 4 para 7. The appropriate authority is that specified in the direction for requisition, and if none is specified, the Defence Council: Army Act 1955 Sch 4 para 7; Air Force Act 1955 Sch 4 para 7 (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/(7) POWERS IN RELATION TO LAND AND OTHER PROPERTY/ (vi) Billeting; Requisitioning of Vehicles/B. REQUISITIONING OF VEHICLES/134. Power to require returns as to vehicles, and to inspect.

134. Power to require returns as to vehicles, and to inspect.

Whether or not the provisions of the Army Act 1955 or the Air Force Act 1955 as to the requisitioning of vehicles¹ are in operation, the Defence Council² may at any time issue regulations requiring persons having possession of mechanically propelled vehicles, or trailers³, or horses or mules⁴, to submit returns concerning these vehicles or animals, and to afford all reasonable facilities for their inspection and examination by specified authorities or persons⁵. Failure to comply with those regulations, or the obstruction of any authorised person in such inspection, is an offence⁶; and if there is obstruction⁷ a search warrant may be obtained to carry out the inspection⁸.

1 le the Army Act 1955 s 165 and the Air Force Act 1955 s 165: see para 130 ante.

2 As to the Defence Council see para 2 ante.

3 le trailers normally drawn by mechanically propelled vehicles: see the Army Act 1955 s 170; and the Air Force Act 1955 s 170.

4 The Army Act 1955 s 170 applies to horses and mules as it does to mechanically propelled vehicles: s 172(4). There is no corresponding provision in the Air Force Act 1955.

5 Army Act 1955 s 170; Air Force Act 1955 s 170 (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). The regulations may include provisions specifying the particulars to be given in the returns and the person or authority who may require the returns to be made and who may inspect the vehicles: Army Act 1955 s 170; Air Force Act 1955 s 170.

6 Army Act 1955 s 171(1)(b), (c); Air Force Act 1955 s 171(1)(b), (c). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or a term of imprisonment not exceeding three months, or both: Army Act 1955 s 171(1); Air Force Act 1955 s 171(1) (both amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see para 40 note 4 ante.

7 As to the nature of obstruction see the cases cited in para 132 note 3 ante.

8 Army Act 1955 s 171(2); Air Force Act 1955 s 171(2). The search warrant may be issued by a justice of the peace who is satisfied by information on oath that an authorised person has been obstructed; the premises in respect of which the obstruction occurred may only be entered between the hours of 6 am and 9 pm; and a constable is authorised by the warrant to accompany the person obstructed: Army Act 1955 s 171(2); Air Force Act 1955 s 171(2). As to search warrants see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 871 et seq.

UPDATE

126-134 Billeting; Requisitioning of vehicles

Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/(i) Introduction/135. Visiting forces of the British Commonwealth.

(8) VISITING FORCES

(i) Introduction

135. Visiting forces of the British Commonwealth.

The Visiting Forces (British Commonwealth) Act 1933¹ was enacted with the primary object of enabling the appropriate authorities of any dominion² to exercise control within the United Kingdom over the members of any body or contingent of its naval, military or air forces visiting the United Kingdom with the consent of the United Kingdom government. The Act designated any such body or contingent as a visiting force³, and provided that the service courts and authorities⁴ of that dominion to which any such force belonged might exercise within the United Kingdom, in relation to the members of that force, all such powers concerning discipline and the internal administration of the force as were conferred on it by the law of its own part of the Commonwealth⁵. Provision was also made for the United Kingdom authorities⁶, at the request of the authorities of a visiting force, to perform any function and exercise any power, in relation to that force and its members, which they could perform or exercise in relation to a like home force⁷ or its members, saving any interference with the internal administration or the discipline of the visiting force⁸. The Act further provided for the application, with any necessary exceptions, modifications or adaptations, to any visiting force of any United Kingdom enactments conferring any exemption, privilege or immunity on the home forces or their members, property or equipment⁹.

1 The Visiting Forces (British Commonwealth) Act 1933 ss 1-3 have been repealed. See also paras 137 note 2, 255 post. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 'Dominion' has the same meaning as in the Statute of Westminster 1931 (see COMMONWEALTH vol 13 (2009) PARA 707): Visiting Forces (British Commonwealth) Act 1933 s 8(1).

3 See *ibid* s 8(1); Armed Forces Act 1981 s 20(1), Sch 3 para 1(4). The definition of 'visiting force' has been applied in relation to forces raised by many other territories of the Commonwealth as they became sovereign independent states: see para 138 post. As to the Commonwealth see COMMONWEALTH.

4 'Court' includes a service court of inquiry and any officer of a visiting force who is empowered to review the proceedings of a service court or to investigate or himself to dispose of charges: Visiting Forces (British Commonwealth) Act 1933 s 8(1).

5 *Ibid* s 1(1) (repealed). See now the Visiting Forces Act 1952 s 2(1); and para 143 post.

6 This included the Admiralty, the Army Council and the Air Council: Visiting Forces (British Commonwealth) Act 1933 s 2(1) (repealed). See para 2 ante.

7 'Home forces' means the naval, military or air forces of Her Majesty raised in the United Kingdom, including any body, contingent, or detachment of any of the home forces, wherever serving: *ibid* s 8(1).

8 *Ibid* s 2(1) (repealed). See also s 1(5) (repealed), which enabled members of a home force to be directed by the Admiralty, the Army Council or the Air Council, at the request of the officer commanding a visiting force or his government, to carry out arrests of members of that force and hand them over to their own authorities.

9 *Ibid* s 2(3) (repealed).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/(i) Introduction/136. Visiting forces of allied foreign powers.

136. Visiting forces of allied foreign powers.

Provision was made at the beginning of the 1939-45 war in relation to visiting forces of foreign powers allied, and foreign authorities¹ associated, with the Crown, but the jurisdiction of the civil courts to try members of those forces for offences against the law of the United Kingdom was expressly retained².

At a later stage in the war, a separate enactment, applicable only to members of the forces of the United States of America, provided that no criminal proceedings could be prosecuted before any United Kingdom court in the United Kingdom against any member of the military or naval forces of the United States³. There was provision for the waiver, at the instance of the United States authorities, of this immunity of their forces from United Kingdom criminal jurisdiction in any particular case⁴.

The application of these enactments could be extended to any of the forces to which they applied while they were visiting a colony or mandated territory⁵.

1 Ie such authorities recognised by the Crown as competent to maintain armed forces for service in association with Her Majesty's forces: Allied Forces Act 1940 s 1(2) (repealed). An example of such an authority would be that maintaining the Free French forces. As to visiting forces generally see D Fleck (ed) *The Handbook of the Law of Visiting Forces* (2001); J Woodliffe *The Peacetime Use of Foreign Military Installations under Modern International Law* (1992); G Draper *Civilians and the NATO Status of Forces Agreement* (1966).

2 See the Allied Forces Act 1940 ss 1, 2 (repealed). The relevant provisions of the Visiting Forces (British Commonwealth) Act 1933, including parts of s 1 (repealed) and also ss 2, 3 (repealed) (see para 135 ante), were applied to these allied and associated forces with appropriate modifications: Allied Forces Act 1940 s 1(3) (repealed). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

3 See the United States of America (Visiting Forces) Act 1942 s 1(1) (repealed). The powers of arrest and search exercisable under United Kingdom law were retained, but any member of the United States forces arrested by a United Kingdom authority was required to be handed over to the appropriate United States authority: see s 1(2) (repealed).

4 Ibid s 1(1) proviso (repealed).

5 See the Allied Forces Act 1940 s 1(3); and the United States of America (Visiting Forces) Act 1942 s 3 (both repealed). As to the meaning of 'colony' see para 20 note 4 ante; and COMMONWEALTH vol 13 (2009) PARA 705. A mandated territory was a territory administered in accordance with a mandate from the League of Nations. The League of Nations was dissolved in 1946.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/(i) Introduction/137. The Visiting Forces Act 1952 and the International Headquarters and Defence Organisations Act 1964.

137. The Visiting Forces Act 1952 and the International Headquarters and Defence Organisations Act 1964.

The Visiting Forces Act 1952¹ applies, by its own express terms, to specified countries of the Commonwealth², and it may be applied by Order in Council to the forces of any country if its application appears to the Crown to be expedient to any arrangements for common defence or to any other arrangements for defence co-operation³. One of the main purposes of the Act was to give statutory effect to the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty 1951⁴, and therefore all the provisions of the Visiting Forces Act 1952 have been applied with adaptations to all the members of the North Atlantic Treaty Organisation, but they have also been applied to some countries which are neither members of that organisation nor of the Commonwealth⁵. The Act may be extended so as to apply to the visiting forces⁶ concerned when they are visiting other territories which are dependencies of the United Kingdom⁷.

The Visiting Forces Act 1952 imposes restrictions on the jurisdiction of the courts of the United Kingdom, confers jurisdiction on the service courts⁸ of a sending country⁹, and grants powers to the appropriate service authorities of a sending country in relation to members of a visiting force and other persons who are subject to its service law otherwise than as members of its forces¹⁰. It also contains special provisions as to: (1) the arrest and holding in custody of offenders against the law of the United Kingdom¹¹; (2) coroners' inquests, including the adjournment of an inquest if it appears that the deceased had a relevant association¹² with a visiting force, or that a person has been arrested and charged, or detained with a view to being charged, before a court of a sending country with the homicide of the deceased person¹³; (3) the making of arrangements for the settlement of claims against visiting forces¹⁴; and (4) the application of provisions of the Army Act 1955 concerning the apprehension and disposal of deserters and absentees without leave to members of the forces of any country to which the Visiting Forces Act 1952 applies¹⁵. In addition the Act makes provision for the application to a visiting force and its members and other persons connected with it of certain provisions of the law of the United Kingdom¹⁶.

The International Headquarters and Defence Organisations Act 1964 applies the Visiting Forces Act 1952, with adaptations, to international headquarters and defence organisations set up in pursuance of common defence arrangements and designated by Order in Council for the purposes of the Act, and to certain persons connected with such headquarters and organisations¹⁷. The effect of this Act, and of the Orders in Council made under it, is to approximate the legal position of such designated bodies, and of their military and civilian members, to that of visiting forces and their corresponding members and members of their civilian components¹⁸.

1 In so far as the provisions mentioned in paras 135-136 ante were relevant to: (1) the powers of the authorities of the country to which a visiting force (defined in para 140 post) belonged (the 'sending country') over that force and its members; (2) the adaptation and application to the visiting force and its members of various United Kingdom laws; and (3) the functions which could be exercised by the United Kingdom civil authorities in relation to members of the visiting force, they have been replaced by the Visiting Forces Act 1952. As to the meaning of 'United Kingdom' see para 20 note 1 ante. See the State Immunity Act 1978 s 16(2), which denies the applicability of Pt I (ss 1-17) (as amended) to proceedings relating to anything done by or in relation to the armed forces of a state while present in the United Kingdom and, in particular, has effect subject to the Visiting Forces Act 1952; and see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 259. See also *Holland v Lampen-Wolfe* [2000] 3 All ER 833, [2000] 1 WLR 1573, HL. As to the conferring of the status of a diplomatic

agent on any person designated by a state as an observer or inspector under the Stockholm Document (ie the document dated 19 September 1986 and concluded at the Stockholm Conference on confidence and security building measures and disarmament in Europe) see the Arms Control and Disarmament (Privileges and Immunities) Act 1988 s 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 273.

2 See the Visiting Forces Act 1952 s 1(1) (as amended); and para 138 post. Section 18 (itself repealed) repealed the Visiting Forces (British Commonwealth) Act 1933 ss 1-3, 5(1), the Allied Forces Act 1940 and the United States of America (Visiting Forces) Act 1942 (as to which see paras 135-136 ante). The unrepealed provisions of the Visiting Forces (British Commonwealth) Act 1933 are those concerned with the attachment of personnel of Commonwealth forces to home forces and mutual command between members of such forces serving together or acting in combination: see paras 11, 22 ante, 255 post.

3 See the Visiting Forces Act 1952 s 1(1)(b), (2) (s 1(2) amended by the Armed Forces Act 1996 s 33). See also para 138 post.

4 See the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (London, 19 June 1951; TS 3 (1955); Cmd 9363): see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 325. The Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (1951) had effect in English law only if any or all parts of it had been incorporated into English law either by an Act of Parliament or through the operation of customary international law: see *Littrell v United States of America (No 2)* [1994] 4 All ER 203, [1995] 1 WLR 82, CA (where it was held that the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty (1951) Article VIII para 5 had not been implemented into English law by the Visiting Forces Act 1952 or by any other enactment).

5 As to the countries to which the Visiting Forces Act 1952 applies see para 138 post.

6 For the meaning of 'visiting force' see para 140 post.

7 See para 139 post. As to United Kingdom dependencies see COMMONWEALTH vol 13 (2009) PARA 706.

8 For the meaning of 'service court' see para 143 note 1 post.

9 For the meaning of 'sending country' see para 140 note 1 post.

10 See the Visiting Forces Act 1952 ss 2-4, 6 (ss 2, 3 as amended); and para 143 et seq post.

11 See *ibid* s 5 (as amended); and para 66 ante. Where there is reasonable ground for believing that a person taken into custody by a constable without warrant is subject to the jurisdiction of a service court under s 2 (as amended) (see para 143 post), he may notwithstanding anything in the Police and Criminal Evidence Act 1984 Pt IV (ss 34-51) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 938 et seq) be kept in custody without being brought before a magistrates' court for three days, but if he has not been delivered into the custody of the appropriate authority within that period he must as soon as practicable after its expiration be brought before such a court or released on bail: Visiting Forces Act 1952 s 5(2) (amended by virtue of the Criminal Justice Act 1988 s 107(1), Sch 15 para 13). See further para 66 note 7 ante.

12 As to a 'relevant association' see para 143 post.

13 See the Visiting Forces Act 1952 s 7 (as amended); and CORONERS vol 9(2) (2006 Reissue) paras 959-962. See also para 146 post.

14 See *ibid* s 9 (as amended); and para 149 post.

15 See *ibid* s 13 (as amended); and paras 62-64, 66 ante.

16 See *ibid* s 8; and para 142 post.

17 See the International Headquarters and Defence Organisations Act 1964 s 1(1), (2) (amended by the British Nationality Act 1981 s 52(8), Sch 9). There has not been any amendment to the International Headquarters and Defence Organisations Act 1964 comparable to that added to the Visiting Forces Act 1952 s 1(2) by the Armed Forces Act 1996 s 33 (see the text to notes 1-3 supra).

18 See para 150 post.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/(ii) Application of Visiting Forces Legislation/138. Countries to the forces of which the Visiting Forces Act 1952 applies.

(ii) Application of Visiting Forces Legislation

138. Countries to the forces of which the Visiting Forces Act 1952 applies.

The provisions of the Visiting Forces Act 1952 are applied to the forces¹ of certain countries by the Act itself², and may be applied by Order in Council to any other country, wholly or partly and subject to any specified limitations, modifications and adaptations, where this appears to the Crown expedient, having regard to any arrangements for common defence or to any other arrangements for defence co-operation between the government of that country and the government of the United Kingdom³.

1 'Forces' in relation to a country means any of the naval, military or air forces of that country: Visiting Forces Act 1952 s 17(1).

2 These countries are: Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Republic of Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Hebrides (now Vanuatu), New Zealand, Nigeria, Pakistan, Papua New Guinea, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanganyika, Tanzania (including Zanzibar), Tonga, Trinidad and Tobago, Tuvalu, Uganda, Western Samoa, Zambia and Zimbabwe: see the Visiting Forces Act 1952 s 1(1)(a) (amended by the Ghana Independence Act 1957 s 4(4), Sch 2; the Federation of Malaya Independence Act 1957 s 2(1), Sch 1; the Cyprus Act 1960 s 3(2), Schedule; the Nigeria Independence Act 1960 s 3(4), Sch 2; the Sierra Leone Independence Act 1961 s 3(3), Sch 3; the Tanganyika Independence Act 1961 s 3(4), Sch 2; the South Africa Act 1962 s 2(3), Sch 5; the Jamaica Independence Act 1962 s 3(5), Sch 2; the Trinidad and Tobago Independence Act 1962 s 3(4), Sch 2; the Uganda Independence Act 1962 s 3(4), Sch 3; the Kenya Independence Act 1963 s 4(4), Sch 2; the Zanzibar Act 1963 s 1(2), Sch 1; the Malawi Independence Act 1964 s 4(4), Sch 2; the Zambia Independence Act 1964 s 2(2), Sch 1; the Malta Independence Act 1964 s 4(4), Sch 2; the Gambia Independence Act 1964 s 4(4), Sch 2; the Guyana Independence Act 1966 s 5(4), Sch 2; the Botswana Independence Act 1966 s 2(2), Schedule; the Lesotho Independence Act 1966 s 2(2), Schedule; the Singapore Act 1966 s 1(2), Schedule; the Barbados Independence Act 1966 s 4(5), Sch 2; the Mauritius Independence Act 1968 s 4(3), Sch 2; the Swaziland Independence Act 1968 s 2(2), Schedule; the Tonga Act 1970 s 1(3), Schedule; the Fiji Independence Act 1970 s 4(3), Sch 2; the Bahamas Independence Act 1973 s 4(3), Sch 2; the Pakistan Act 1973 s 4(2), Sch 4; the Bangladesh Act 1973 s 1(3), Schedule; the Seychelles Act 1976 s 7, Schedule; the Solomon Islands Act 1978 s 7(4), Schedule; the Tuvalu Act 1978 s 4(3), Sch 2; the Kiribati Act 1979 s 3, Schedule; the Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980 s 3, Schedule; the New Hebrides Act 1980 s 2(1), Sch 1; the Belize Act 1981 s 3(4), Sch 2; the Brunei and Maldives Act 1985 s 1, Schedule; the Pakistan Act 1990 s 1, Schedule para 3; the Namibia Act 1991 s 1, Schedule para 4; the South Africa Act 1995 s 1, Schedule para 5(1); the Commonwealth Act 2002 s 2, Sch 2 para 3(1); the Grenada Modification of Enactments Order 1973, SI 1973/2156; the Dominica Modification of Enactments Order 1978, SI 1978/1030; the Saint Lucia Modification of Enactments Order 1978, SI 1978/1899; the Saint Vincent Modification of Enactments Order 1979, SI 1979/917; the Zimbabwe (Independence and Membership of the Commonwealth) (Consequential Provisions) Order 1980, SI 1980/701; the Antigua and Barbuda Modification of Enactments Order 1981, SI 1981/1105; and the Saint Christopher and Nevis Modification of Enactments Order 1983, SI 1983/882).

3 Visiting Forces Act 1952 s 1(1)(b), (2), (3) (s 1(2) amended by the Armed Forces Act 1996 s 33). As to the meaning of 'United Kingdom' see para 20 note 1 ante. Before any recommendation is made to Her Majesty in Council to make any such order, a draft of the order must be laid before Parliament and approved by resolution of each House: Visiting Forces Act 1952 s 1(4). The following countries are designated by Order in Council as countries to which all the provisions of the Visiting Forces Act 1952 apply: Belgium, France, the Netherlands, Norway, and the United States of America (see the Visiting Forces (Designation) Order 1954, SI 1954/634); Luxembourg, Turkey, Greece, Denmark, Portugal and Italy (see the Visiting Forces (Designation) Order 1956, SI 1956/2041); the Federal Republic of Germany (see the Visiting Forces (Designation) Order 1961, SI 1961/1511); the Kingdom of Spain (see the Visiting Forces (Designation) Order 1989, SI 1989/1329); Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, Slovenia and

Sweden (see the Visiting Forces (Designation) Order 1997, SI 1997/1779); Armenia, Austria, Azerbaijan, Belarus, Finland, Georgia, Kazakhstan, Kyrgyzstan, the Former Yugoslav Republic of Macedonia, Moldova, Russia, Switzerland, Turkmenistan, Ukraine, Uzbekistan (see the Visiting Forces (Designation) Order 1998, SI 1998/1268). As to the application of the Visiting Forces Act 1952 to Bermuda see the Visiting Forces Act (Application to Bermuda) Order 2001, SI 2001/3922.

Any power conferred by the Visiting Forces Act 1952 to make an Order in Council or order is to be construed as including a power, exercisable in the like manner, to vary or revoke the Order in Council or order; and an Order in Council varying or revoking an Order under s 1(2) (as amended) may contain such transitional provisions as appear to Her Majesty in Council expedient in consequence of the variation or revocation: s 17(6).

UPDATE

138 Countries to the forces of which the Visiting Forces Act 1952 applies

NOTE 3--The Visiting Forces (Designation) Order 2008, SI 2008/299, designates Bosnia-Herzegovina, Croatia, Ireland, Jordan, Montenegro, Serbia and Tajikistan as countries to which the 1952 Act applies.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/(ii) Application of Visiting Forces Legislation/139. Extension of the Visiting Forces Act 1952 to territories outside the United Kingdom.

139. Extension of the Visiting Forces Act 1952 to territories outside the United Kingdom.

Although the provisions of the Visiting Forces Act 1952 in themselves apply only to visiting forces¹ within the United Kingdom², those provisions, and those of any Order in Council in force at the time³ designating any country to which a provision of that Act is to apply⁴, may be extended⁵ by Order in Council, subject to any adaptations, modifications or exceptions specified in the Order, to the Channel Islands and the Isle of Man and all colonies⁶.

1 The provisions of the Visiting Forces Act 1952 apply also to certain international headquarters and defence organisations: see paras 137 ante, 150 post.

2 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

3 Any Order in Council made under the Visiting Forces Act 1952 s 1(2) (as amended) (see para 138 ante), designating a country to which the Act is to apply, which is made after the Order made under s 15 (as amended) extending the Act to any territory, may itself provide whether or not its own effect is to extend to that territory: s 15(2).

4 For a list of the countries so designated see para 138 note 3 ante.

5 All the provisions of the Visiting Forces Act 1952 may be extended except s 15 (as amended), which itself authorises the extension: see s 15(1)(a).

6 Ibid s 15(1), (3)(a), (b) (s 15(3) amended by the British Nationality Act 1981 s 52(8), Sch 9). As to the meaning of 'colony' see para 20 ante; and COMMONWEALTH vol 13 (2009) PARA 705. The following Orders in Council are now in force, extending the provisions of the Visiting Forces Act 1952 to territories outside the United Kingdom: the Visiting Forces Act (Application to the Isle of Man) Order 1962, SI 1962/170; and the Visiting Forces Act (Application to Colonies) Order 1954, SI 1954/636 (amended by SI 1957/103; SI 1959/874; SI 1959/1979; SI 1960/1061; SI 1962/1638; SI 1967/811; SI 1967/1481; SI 1990/242; SI 2001/3922), which extends provisions of the Act to the following territories: Anguilla, Ascension Islands, the British Indian Ocean Territory, the Cayman Islands, Gibraltar, Hong Kong, the Sovereign Base Areas of Dhekelia and Akrotiri, Montserrat, the Turks and Caicos Islands and the Virgin Islands. Each of those Orders in Council provides that what is extended is 'the provisions of the Act as subsequently amended' (see eg the Visiting Forces Act (Application to the Isle of Man) Order 1962, SI 1962/170, art 2), or 'the provisions of the Act as from time to time amended' (see eg the Visiting Forces Act (Application to Colonies) Order 1954, SI 1954/636, art 2 (amended by SI 1960/1061)), with the exception in each instance of the Visiting Forces Act 1952 s 15; and consequently the orders have effect to extend, to the territories to which they respectively relate, provisions inserted in the Act subsequently to the making of the Order. These Orders in Council have the effect, by the terms of the Visiting Forces Act 1952 (see s 15(1)(a)), of applying its provisions as so extended to each of the Commonwealth countries specified in s 1(1)(a) (see para 138 note 2 ante), but to secure the application of those extensions to any country already designated for the purposes of the Act under s 1(2) (as amended) (see para 138 note 3 ante) the language of s 15(1)(b) requires express provision by Order in Council to be made. The Visiting Forces Act (Application to the Isle of Man) Order 1962, SI 1962/170, art 3, itself provides that the existing Orders in Council made under the Visiting Forces Act 1952 s 1(2)(b) (as amended), designating various countries for the purposes of the Act, are to extend to the Isle of Man. By separate Orders in Council, the following further applications to designated countries of the extensions of the provisions of the Act to dependent territories have been made and remain in force: (1) the extensions to the British Indian Ocean territory, Gibraltar, Hong Kong, the Sovereign Base Areas of Dhekelia and Akrotiri and the Turks and Caicos Islands, as they apply to the United States of America; (2) those to Gibraltar and the Sovereign Base Areas, as they apply to France; and (3) those to the Sovereign Base Areas, as they apply to Turkey and Greece: see the Visiting Forces (Designation) (Colonies) Order 1954, SI 1954/637 (amended by SI 1954/1368; SI 1958/1262; SI 1969/875; SI 1962/1639; SI 1967/1639; SI 1967/812; SI 1967/1482; SI 1990/241); Visiting Forces (Designation) (Sovereign Base Areas of Akrotiri and Dhekelia) Order 1962, SI 1962/1639. The Visiting Forces Act 1952 further provides that where, subsequently to the making of an Order in Council under s 15 (as amended) extending provisions of the Act to a territory specified in s 15(3) (as amended), an Order in Council is made under s 1(2) (as amended) designating a country for the purposes of

provisions of the Act, that subsequent order may be made so as to extend to that territory, or not, as may be provided in the subsequent Order: s 15(2).

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140. Service personnel to whom the legislation applies.

'Visiting force' means any body, contingent or detachment of the naval, military or air forces of the sending country¹ present in or in transit to the United Kingdom² on the invitation of Her Majesty's government in the United Kingdom³. 'Member', in relation to a visiting force, means any person who, being a member of the forces of the sending country, has been appointed to serve with that force⁴, but if that person is a member of a reserve or auxiliary force he is deemed to be a member of the forces only so long as he is either called into actual service or is called out for training⁵.

1 'Sending country', in relation to a visiting force, means the country to whose forces the force belongs: Visiting Forces Act 1952 s 12(1).

2 This includes United Kingdom territorial waters and any place on, under or above an installation in a designated area within the meaning of the Continental Shelf Act 1964 s 1(7) (as amended) or any waters within 500 metres of such an installation: Visiting Forces Act 1952 s 12(1), (1A) (s 12(1) amended by, and s 12(1A) added by, the Criminal Justice Act 1988 s 170(1), Sch 15 para 14). As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to United Kingdom territorial waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 124-126; WATER AND WATERWAYS vol 100 (2009) PARA 31. As to designated areas within the meaning of the Continental Shelf Act 1964 s 1(7) (as amended) see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1636.

3 Visiting Forces Act 1952 s 12(1) (as amended: see note 2 supra), s 17(1), (4).

4 See *ibid* s 12(1).

5 *Ibid* s 17(2). As to the proof by certificate, in proceedings in a United Kingdom court, of a person's membership or non-membership of a visiting force see s 11(1); and para 148 post. As to the extension of the attributes of a visiting force to certain international headquarters and defence organisations see para 150 post.

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141. Civilians.

Certain provisions of the Visiting Forces Act 1952 apply to members of a civilian component of a visiting force¹. To qualify as such, a person must hold a passport issued in respect of him by a government, which is not a passport issued by the passport authorities of the United Kingdom or any colony², and which contains an uncanceled entry made by or on behalf of the appropriate authority³ of the sending country⁴, stating that the holder is a member of a civilian component of a visiting force of that country, together with an uncanceled note of recognition⁵ of that entry by or on behalf of the Secretary of State⁶.

1 See eg the Visiting Forces Act 1952 s 3 (as amended) (see para 144 post), s 6 (see para 147 post), s 7 (as amended) (see para 146 post), s 10 (as amended) (see the text and notes 2-6 infra), s 12(2). Although members of a civilian component of a visiting force are expressly mentioned in these provisions, they are affected by the whole of Pt I (ss 1-12) (as amended) and Pt II (ss 13, 14) (as amended): see eg paras 143-147, 149 post. For the meaning of 'visiting force' see para 140 ante.

2 As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to the meaning of 'colony' see para 20 note 4 ante; and COMMONWEALTH vol 13 (2009) PARA 705.

3 References to the appropriate authority are references to the authority appointed by the government of the sending country for the purposes of the provision in question: Visiting Forces Act 1952 s 17(3). See note 4 infra.

4 For the meaning of 'sending country' see para 140 note 1 ante.

5 If any mark or indication made in the passport by or on behalf of the Secretary of State signifying that the entry has been noted and approved: Visiting Forces Act 1952 s 10(2). The recognition may be withdrawn either by the cancellation of the note of recognition in the passport, or by notification in writing by or on behalf of the Secretary of State to the appropriate authority of the sending country that the recognition is withdrawn: s 10(1). These functions of the Secretary of State are discharged by the Secretary of State for Foreign and Commonwealth Affairs. As to the Secretary of State see para 2 ante.

6 Ibid s 10(1). 'Passport' includes any document which would be treated, by United Kingdom law for the time being in force, as being the equivalent of a passport in the case of a national of the country by whose government the document is issued entering the United Kingdom: s 10(4). For the purposes of s 10, in any proceedings in any United Kingdom court, a document purporting to be a passport issued by or on behalf of a government in respect of a person of the same name as the person in question is deemed to be what it purports to be, unless the contrary is proved: s 10(3)(a). Similar provisions apply to entries in passports: see s 10(3)(b), (c). The expression 'United Kingdom court' means a court exercising jurisdiction in the United Kingdom under United Kingdom law otherwise than by virtue of s 2 (as amended) (see para 143 post); and the expression 'United Kingdom law' means the law of the United Kingdom or any part or it: s 17(1).

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142. Application of enactments relating to home forces.

Where under any enactment¹ a power is exercisable by any authority or person respecting the home forces², their members or service courts or other persons in any way connected with those forces, or respecting property³ used or to be used for the purposes of the home forces, or for taking possession of or acquiring (by agreement or compulsorily) such property, provision may be made by Order in Council⁴ to secure, subject to any conditions specified by or under the Order, that any such power under any enactment⁵ is exercisable by the same authority or person in the case of any visiting force⁶ to which the order applies to the extent to which that power would be exercisable if the visiting force were a part of any of the home forces⁷. Any enactment which prohibits, restricts or requires the doing of anything in relation to any of the home forces, their members or other persons in any way connected with them, or their service courts, or any property used or to be used for the purposes of any of the home forces may similarly be extended to any visiting force⁸. Any visiting force, its members and other persons connected with it, its service courts, and property used or to be used for its purposes, may be exempted by Order in Council from the operation of any enactment to the extent which would be possible if the visiting force were a part of any of the home forces; and the force and such persons and property may have conferred on them any privilege or immunity⁹ which would be enjoyed by or could be conferred on any part of a home force¹⁰.

A number of enactments make express provision for their application in relation to visiting forces¹¹.

1 In the Visiting Forces Act 1952 s 8, 'enactment' means any enactment of the Parliament of the United Kingdom, and includes any instrument having effect under an enactment: s 8(7). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 'The home forces' means any of the forces of the Crown raised in the United Kingdom and for the time being serving there: *ibid* s 12(1).

3 'Property' includes both real and personal property: *ibid* s 8(7).

4 Before any recommendation is made to the Crown to make such an Order, a draft must be approved by a resolution of each House of Parliament: *ibid* s 8(6). Any increase in the sums payable out of money provided by Parliament under any enactment attributable to the provisions of such an Order must be defrayed out of money similarly provided: s 8(5). For the Order in Council made under this power which is currently in force see note 7 *infra*.

5 For the purposes of *ibid* s 8(1), it is irrelevant whether the power is exercisable under a provision expressly relating to the home forces or under a more general provision: s 8(8).

6 For the meaning of 'visiting force' see para 140 ante. As to the application of *ibid* s 8 to designated international headquarters and defence organisations see para 150 post.

7 *Ibid* s 8(1). Any such Order may specify conditions and may contain any incidental, consequential and supplementary provisions as appear expedient for its purposes: s 8(4)(a). It may also make the necessary financial provisions: see s 8(4)(b). Under s 8 (and under the powers conferred by the International Headquarters and Defence Organisations Act 1964 s 1(1), (2), Schedule para 7 (see para 150 post)) the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736 (as amended) has been made. The visiting forces to which this Order applies are those of the countries specified in para 138 notes 2-3 ante: see art 3, Sch 1. The Order applies to the visiting forces provisions of numerous enactments under which powers are exercised in relation to the home forces and their members or property, or to their service courts, concerning: the procurement of articles required for the public services (see art 4); the acquisition of land under the Defence Acts and the Military Lands Acts 1892 to 1903 (see para 95 et seq ante) (see the Visiting Forces

and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 5, Sch 3); the use of intellectual property rights (see art 6, Sch 4); the establishment of wireless telegraphy, postal services and telecommunications systems (see art 7 (amended by SI 2001/1149)); road vehicles (see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, arts 8, 9); exemption from harbour dues (see art 10); town and country planning (see art 11); various other miscellaneous exemptions, immunities and privileges (see art 12); the application of the Factories Act 1961 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 306 et seq) (see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 13); the notification of diseases (see art 14); the application of the clean air legislation (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 189 et seq) (see art 15); the summoning or ordering of civilian or service witnesses to attend before service courts (see art 16, Sch 7); the custody, detention and treatment of persons sentenced by service courts (see art 17, Sch 8); and punishment for inducing or assisting desertion (see art 18).

8 Visiting Forces Act 1952 s 8(3).

9 See *Reeves v Deane-Freeman* [1953] 1 QB 459, [1953] 1 All ER 461, CA (a decision on the Visiting Forces (British Commonwealth) Act 1933 s 2(3)(b) (now repealed)), in which it was held that a member of a visiting force sued for damages for a tort committed in the course of his duty had the same privilege under the Limitation Act 1939 s 21 (since repealed and not replaced) as a member of the home forces.

10 Visiting Forces Act 1952 s 8(2). The power to grant exemptions and to confer privileges or immunities under s 8(2) is applicable whether (if the visiting force were a part of a home force) the exemption, privilege or immunity would subsist or be capable of being conferred by virtue of any provision relating expressly to the home forces, or by more general provision, or because any enactment does not bind the Crown: s 8(8). See eg *R v Birkenhead Borough Justices, ex p Smith* [1954] 1 All ER 503, [1954] 1 WLR 471, DC (non-enforcement of affiliation order where putative father an American soldier).

11 See eg the Offices, Shops and Railway Premises Act 1963 s 84 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 336); the Trade Descriptions Act 1968 ss 1, 32(1) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) paras 475, 481); the Fire Precautions Act 1971 s 40(11) (see FIRE SERVICES vol 18(2) (Reissue) para 140); the Immigration Act 1971 s 8(4)(c) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 89); the Inheritance Tax Act 1984 ss 6(4), 155(1) (see INHERITANCE TAXATION vol 24 (Reissue) para 608); the Income and Corporation Taxes Act 1988 s 323 (see INCOME TAXATION vol 23(2) (Reissue) para 1171); the Road Traffic Act 1991 s 79 (as amended) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) para 205); the Water Resources Act 1991 s 223 (see WATER AND WATERWAYS vol 100 (2009) PARA 20); the Taxation of Chargeable Gains Act 1992 s 11 (as amended) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) para 100); the Clean Air Act 1993 s 46 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 210); the Radioactive Substances Act 1993 s 42 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1441); the Public Health (Aircraft) Regulations 1979, SI 1979/1434 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 933 et seq); the Public Health (Ships) Regulations 1979, SI 1979/1435 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 933 et seq); the Air Navigation Order 2000, SI 2000/1562, art 126; and the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 23 (see AIR LAW vol 2 (2008) PARA 392). As to the further application of many of these provisions to international headquarters etc see para 150 post.

UPDATE

142 Application of enactments relating to home forces

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 7--SI 1999/1736 Sch 1 amended: SI 2009/705. SI 1991/1736 art 18 substituted, Schs 7, 8 amended: SI 2009/2054.

NOTE 11--SI 2000/1562 art 126 now Air Navigation Order 2005, SI 2005/1970, art 152 (see AIR LAW vol 2 (2008) PARAS 31, 353, 359). Fire Precautions Act 1971 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. SI 2002/798 art 23 now Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, art 29.

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(iii) Service Courts

143. Jurisdiction and validity of sentences of service courts of visiting forces.

The service courts¹ and service authorities² of any country specified in the Visiting Forces Act 1952³, or designated by an Order in Council made under that Act⁴, may exercise, within the United Kingdom⁵ or on board any of Her Majesty's ships or aircraft⁶, all such powers as are exercisable by the law of that country over members of any of its forces which is a visiting force within the meaning of the Act⁷ and over all other persons who, being neither holders of British nationality⁸ nor ordinarily resident in the United Kingdom⁹ are for the time being subject to the service law¹⁰ of that country otherwise than as members of that country's forces¹¹.

For the purposes of any proceedings in a United Kingdom court, where any sentence has been passed within or outside the United Kingdom by a service court of any country within the scope of these provisions¹² upon a person who immediately before such sentence was passed was subject to the jurisdiction of that court in accordance with the provisions of the Visiting Forces Act 1952¹³, then that service court is deemed to have been properly constituted, and the sentence is deemed to be within the jurisdiction of that court and in accordance with the law of that country, and if executed according to the tenor of the sentence is deemed to have been lawfully executed¹⁴.

1 'Service court' means a court established under service law (see note 10 infra), and includes any authority of a country who under the law of that country is empowered to review the proceedings of a service court or to investigate charges brought against persons subject to the service law of that country: Visiting Forces Act 1952 s 12(1).

2 'Service authorities' means naval, military or air force authorities: *ibid* s 12(1).

3 *Ie* in *ibid* s 1(1)(a) (as amended): see para 138 ante.

4 See *ibid* s 1(1)(b), (2) (as amended): see para 138 ante.

5 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

6 'Her Majesty's ships or aircraft' does not include ships or aircraft belonging to Her Majesty otherwise than in right of Her Majesty's government in the United Kingdom: Visiting Forces Act 1952 s 12(1).

7 A person is not treated as a member of such a force if he became a member when he was in the United Kingdom unless it is shown that he consented to do so: *ibid* s 2(2) proviso. For the meaning of 'visiting force' see para 140 ante. As to the application of s 2 (as amended) to designated international headquarters and defence organisations see para 150 post.

8 The Visiting Forces Act 1952 refers to citizens of the United Kingdom and colonies, but this form of citizenship has been replaced by new categories of citizenship under the British Nationality Act 1981: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 5 et seq.

9 In determining for these purposes whether a person is, or ever was, ordinarily resident in the United Kingdom, no account may be taken of any period during which he has been or intends to be present in the United Kingdom while being a member of a visiting force or of a civilian component of such a force, or while being a dependant of a member of a visiting force or of such a component: Visiting Forces Act 1952 s 12(3). For these purposes, 'dependant', in relation to a person, means the wife or husband or that person, or any person wholly or mainly maintained by him, or in his custody, charge or care: s 12(4). As to ordinary residence see CONFLICT OF LAWS vol 8(3) (Reissue) para 58.

10 'Service law', in relation to a country, means the law governing all or any of the forces of that country: *ibid* s 12(1).

11 *Ibid* s 2(1), (2). As to the meaning of 'United Kingdom court' see para 141 note 6 ante. The 'other persons' (ie other than members of a visiting force) who by these provisions are recognised as being subject to the jurisdiction of the service courts and authorities of a country are the members of the civilian component of any visiting force of that country (see s 10(1); and para 141 ante) and dependants of members of that force or of a civilian component of it (not being holders of British nationality (see note 8 supra) or ordinarily resident in the United Kingdom), ie persons who have a relevant association with that visiting force: see s 12(2)(a), (b). Citizens of the United States of America who are civilians attached to that country's forces stationed in the United Kingdom may not, however, according to United States law, be tried by court-martial: see *Kinsella v United States (ex rel Singleton)* 361 US 234 (1960); *Grisham v Hagan* 361 US 278 (1960); *Wilson v Bohlender* 361 US 281 (1960); *McElroy v United States* 361 US 281 (1960); *Reid v Covert* 354 US 1 (1955).

If the appropriate authority of any country to which the Visiting Forces Act 1952 applies so requests, the Defence Council, in order to enable the powers given in s 2(1) to be exercised more effectively, may direct members of the home forces to arrest any member of a visiting force of that country, and to hand him over to such service authority of that country as may be directed: s 2(6). As to the appropriate authority see para 141 note 3 ante. For the meaning of 'home forces' see para 142 note 2 ante. For the meaning of 'service authority' see para 143 note 2 ante. As to the Defence Council see para 2 ante. Pursuant to s 2(6), general orders of the Defence Council have been issued authorising such arrest and disposal of members of visiting forces of Canada and New Zealand (orders dated 28 May 1956) and Australia (order dated 1 January 1962). Any person who is, by virtue of these provisions, subject to the jurisdiction of the service courts of another country and is detained in custody pending or during the trial by such a court of a charge brought against him is deemed to be in legal custody for the purpose of any proceedings in any United Kingdom court: Visiting Forces Act 1952 s 2(5)(b). As to the power to attach and commit for contempt of a service court see CONTEMPT OF COURT vol 9(1) (Reissue) paras 454, 457. The power to summon civilian witnesses for the purposes of a service court of a visiting force is similar to that of a court-martial held in relation to the home forces provided it is reasonably practicable for the witnesses to attend: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 16, Sch 7 paras 1-3. A service witness may be ordered by the appropriate service authority to attend: see Sch 7 para 3. The provisions of the service discipline Acts as to misconduct before courts-martial apply: see Sch 7 para 4. The rules of privilege and immunity of witnesses before the High Court or in any court of criminal jurisdiction in England also apply: see Sch 7 paras 4, 5. The English courts had no jurisdiction to prevent an American three-year-old ward of court being called as a witness in proceedings before an American court-martial; any application for the witness summons to be set aside would have to be made to the United States court-martial: *Re G (a minor) (Witness Summons)* [1988] 2 FLR 396.

12 Ie those of the Visiting Forces Act 1952 s 2(1), (2): see the text and note 11 supra.

13 Ie in accordance with *ibid* s 2 (as amended).

14 *Ibid* s 2(3). A certificate issued by or on behalf of the appropriate authority of a country stating that a person was tried, and if relevant, sentenced to punishment, by a service court on a certain date, or that he is detained in custody in pursuance of a such a sentence or pending or during such a trial, is conclusive evidence in any proceedings before a United Kingdom court of the facts stated in it: s 11(2). Any person detained in custody in pursuance of such a sentence is deemed to be in legal custody for the purpose of any proceedings in a United Kingdom court: s 2(5)(a). A person so sentenced may be detained in naval, military or air force custody, or, if a civilian, in such custody in a civil prison, under arrangements made by the service authorities of any visiting force with the Defence Council (see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 17, Sch 8 paras 1-4); and the provisions of enactments relating to the treatment of person detained in prisons or service custody apply as if the member of the visiting force had been sentenced by a civil court or court-martial as appropriate (see Sch 8 para 5). The provisions of the Army Act 1955 relating to the arrest of deserters and absentees without leave (see para 62 et seq ante) apply to any person authorised to be detained under the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, Sch 8, and who is unlawfully at large: see Sch 8 para 6(1). The provisions of the Army Act 1955 as to the delivery into military custody of persons illegally absent from the regular forces also apply to persons so authorised to be detained: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, Sch 8 para 6(2).

The Visiting Forces Act 1952 s 2(4) provides that a sentence of death passed by a service court of a country within the scope of s 2(1), (2) (see the text and note 11 supra) may only be carried out in the United Kingdom if under the law of the United Kingdom a death sentence could have been passed in a similar case. However, a sentence of death can no longer be passed by a United Kingdom service court: see the Human Rights Act 1998 s 21(5).

UPDATE

143 Jurisdiction and validity of sentences of service courts of visiting forces

NOTE 11--SI 1999/1736 Sch 7 paras 1, 4, 5 amended, para 2 substituted: SI 2009/2054.

NOTE 14--Human Rights Act 1998 s 21(5) repealed: Armed Forces Act 2006 Sch 17. SI 1999/1736 Sch 8 paras 2, 3, 5, 6 amended, definition of 'service court' added (art 2): SI 2009/2054.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/144. Offences exempt from jurisdiction.

(iv) Restriction on Jurisdiction of United Kingdom Courts

144. Offences exempt from jurisdiction.

A member of a visiting force¹, or of a civilian component² of such a force, is exempt from the jurisdiction of the United Kingdom courts³ in respect of an offence against United Kingdom law⁴ alleged to have been committed by him if, at the time of the alleged commission of the offence, he was subject to the jurisdiction⁵ of the service courts⁶ of the country to which the visiting force in question belonged, and one or more of the following conditions is satisfied⁷:

- 25 (1) the alleged offence arose out of and in the course of his duty⁸ as a member of that force or component, as the case may be⁹;
- 26 (2) the alleged offence is an offence against the person¹⁰, and the person or persons against whom it was allegedly committed had at the time of its commission a relevant association¹¹ with that force or with another visiting force of the same country¹²;
- 27 (3) the alleged offence is an offence against property¹³, and the whole of the property¹⁴ in relation to which it was allegedly committed was at that time the property of the sending country or of an authority of that country or of a person having a relevant association with that or another visiting force of the same country¹⁵;
- 28 (4) the alleged offence is one of hijacking¹⁶ on board a military aircraft in the service of that visiting force, or consists of inducing or assisting, in relation to such an aircraft, the commission of any of certain other offences¹⁷;
- 29 (5) the alleged offence is that of destroying, damaging or endangering the safety of aircraft¹⁸, or inducing or assisting the commission outside the United Kingdom of such an act¹⁹, where, in either case, one or more aircraft was or were the only aircraft alleged to have been, or to have been likely to be, thereby destroyed or damaged or whose safety is alleged to have been, or to have been likely to be, thereby endangered²⁰;
- 30 (6) the alleged offence is one of destroying or seriously damaging certain aircraft²¹ where one or more such aircraft was or were the only aircraft alleged to have been thereby destroyed or seriously damaged²²;
- 31 (7) the alleged offence is that of hijacking a warship in the service of the visiting force in question or any other ship used as a naval auxiliary in that service, or consists of inducing or assisting, in relation to any such warship or other ship, the commission of any such act²³; or
- 32 (8) the alleged offence is one of destroying or endangering ships²⁴ or consists of inducing or assisting the commission of any such act²⁵ in relation to a ship, where (in either case) one or more warships in the service of the visiting force in question or other ships used as naval auxiliaries in that service were the only ships alleged to have been, or to have been likely to be, thereby destroyed or damaged or whose safe navigation is alleged to have been, or to have been likely to be, thereby endangered²⁶.

If, at the time when the offence is alleged to have been committed, the alleged offender was not subject to the jurisdiction of the service courts of the country in question, the provisions

described above do not apply²⁷. In relation to the trial of a person who was a member of a civilian component of a visiting force, these provisions as to immunity from trial by a United Kingdom court will not apply to him unless it is shown²⁸ that the case can be dealt with under the law of the sending country²⁹.

Nothing in these provisions is to be construed as derogating from the provisions of any other enactment restricting the prosecution of any proceedings or requiring the consent of any authority to the prosecution³⁰.

1 For the meaning of 'visiting force' see para 140 ante. As to the application of the Visiting Forces Act 1952 s 3 (as amended) to designated international headquarters and defence organisations see para 150 post.

2 As to civilian components of visiting forces see para 141 ante.

3 For the meaning of 'United Kingdom court' see para 141 note 6 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

4 For the meaning of 'United Kingdom law' see para 141 note 6 ante.

5 le by virtue of the Visiting Forces Act 1952 s 2(2): see para 143 ante.

6 For the meaning of 'service court' see para 143 note 1 ante.

7 Visiting Forces Act 1952 s 3(1).

8 A certificate issued by or on behalf of the appropriate authority of the sending country, stating that the alleged offence arose out of and in the course of his duty as a member of the visiting force or component, as the case may be, is sufficient evidence of that fact unless the contrary is proved: *ibid* s 11(4). As to the appropriate authority see para 141 note 3 ante. For the meaning of 'sending country' see para 140 note 1 ante.

9 *Ibid* s 3(1)(a).

10 'Offence against the person' means any of the following offences specified in *ibid* s 3(6), Schedule para 1 (amended by the Sexual Offences Act 1956 ss 48, 51, Sch 3, 4; the Suicide Act 1961 s 2(3), Sch 1 Pt II; the Theft Act 1968 s 33(2), (3), Sch 2 Pt III, Sch 3 Pt III; the Protection of Children Act 1978 s 1(7); the Child Abduction Act 1984 s 11(1); the Internationally Protected Persons Act 1978 s 2(4); the Nuclear Material (Offences) Act 1983 s 4(2)(a); the Prohibition of Female Circumcision Act 1985 s 3(2); the United Nations Personnel Act 1997 s 7, Schedule para 1(2); and the Protection of Children (Northern Ireland) Order 1978, SI 1978/1047 (NI 17), art 9):

1 (1) murder, manslaughter, rape, torture, buggery, robbery and assault and any offence of aiding, abetting, counselling or procuring suicide or an attempt to commit suicide;

2 (2) any offence not falling within head (1) *supra* being an offence punishable under:

1. (a) the Offences against the Person Act 1861, except s 57 (as amended) (bigamy);

1

2. (b) the Children and Young Persons Act 1933 ss 1-5, 11 (all as amended);

2

3. (c) the Infanticide Act 1938 and the Infanticide Act (Northern Ireland) 1939;

3

4. (d) the Protection of Children (Northern Ireland) Order 1978, SI 1978/1047 (NI 17), art 3(1)(a) (as amended);

4

5. (e) the Sexual Offences Act 1956 ss 2-28 (as amended);

5

6. (f) the Protection of Children Act 1978 s 1(1)(a) (as amended);

6

7. (g) the Child Abduction Act 1984; or

7

8. (h) the Prohibition of Female Circumcision Act 1985 s 1 (as amended);

8

- 3 (3) an offence of making such a threat as is mentioned in the Internationally Protected Persons Act 1978 s 1(3)(a), an offence of kidnapping, an offence of false imprisonment and an offence under the Explosive Substances Act 1883 s 2 (as substituted) of causing an explosion likely to endanger life;
- 4 (4) an offence under the Nuclear Material (Offences) Act 1983 s 2, where the circumstances are that: (a) in the case of a contravention of s 2(2), the act falling within s 2(2)(a) or s 2(2)(b) would, had it been done, have constituted an offence under head (1) or head (2) supra; or (b) in the case of a contravention of s 2(3) or s 2(4), the act threatened would, had it been done, have constituted such an offence;
- 5 (5) an offence of making such a threat as is mentioned in the United Nations Personnel Act 1997 s 3 and any of the following offences against a UN worker within the meaning of that Act: (a) an offence of kidnapping; (b) an offence of false imprisonment; (c) an offence under the Explosive Substances Act 1883 s 2 (as substituted) of causing an explosion likely to endanger life.

11 As to references to a person's having at any time a relevant association with a visiting force see para 143 ante.

12 Visiting Forces Act 1952 s 3(1)(b). In relation to cases where the charge, by whatever words expressed, is a charge of attempting or conspiring to commit an offence, or of aiding, abetting, procuring or being accessory to, or of being art and part in, the commission of an offence, s 3(1)(b), (c), (f) (as added) and, except in so far as they relate to inducing or assisting the commission of any act, s 3(1)(d), (e), (g), (h) (as added and amended) have effect as if references in those provisions to the alleged offence were references to the offence which the person charged is alleged to have attempted or conspired to commit or, as the case may be, the offence as respects which it is alleged that he aided, abetted, procured or was accessory to, or was art and part in, the commission of it; and references in s 3(1)(b), (c) to persons in relation to whom, or property in relation to which, the offence is alleged to have been committed must be construed accordingly: s 3(4) (amended by the Protection of Aircraft Act 1973 s 6(1); and the Aviation and Maritime Security Act 1990 s 53(1), Sch 3 para 1).

13 'Offence against property' means any offence punishable under any of the following enactments specified in the Visiting Forces Act 1952 Schedule para 3 (amended by the Theft Act 1968 s 33(2),(3), Sch 2 Pt III, Sch 3 Pt III; the Internationally Protected Persons Act 1978 s 2(4); the Theft Act 1978 s 5(4); the Nuclear Material (Offences) Act 1983 s 4(2)(b); the United Nations Personnel Act 1997 Schedule para 1(4); the Criminal Damage (Northern Ireland) Order 1977, SI 1977/426 (NI 1); and the Protection of Children (Northern Ireland) Order 1978, SI 1978/1047):

- 6 (1) the Malicious Damage Act 1861 (see now the Criminal Damage Act 1971);
- 7 (2) the Debtors Act 1869 s 13 (as amended) (obtaining credit by false pretences);
- 8 (3) the Road Traffic Act 1930 s 28 (see now the Theft Act 1968 s 12 (as amended)) (taking of motor vehicle without owner's consent);
- 9 (4) the Theft Act 1968, except s 8 (robbery);
- 10 (5) the Criminal Damage (Northern Ireland) Order 1977, SI 1977/1247 (NI 14);
- 11 (6) an offence under the Explosive Substances Act 1883 s 2 (as substituted), of causing an explosion likely to cause serious injury to property in connection with such an attack as is mentioned in the Internationally Protected Persons Act 1978 s 1(1)(b);
- 12 (7) the Theft Act 1978 and the Theft (Northern Ireland) Order 1978, SI 1978/1407 (NI 23);
- 13 (8) an offence under the Nuclear Materials (Offences) Act 1983 s 2, where the circumstances are that: (a) in the case of a contravention of s 2(2), the act would, had it been done, have constituted an offence falling within the Visiting Forces Act 1952 Schedule para 3(a)-(j) (as amended) (see heads (1)-(7) supra); or (b) in the case of a contravention of the Nuclear Materials (Offences) Act 1983 s 2(3), (4), the act threatened would, had it been done, have constituted such an offence;
- 14 (9) an offence under the Explosive Substances Act 1883 s 2 (as substituted) of causing an explosion likely to cause serious injury to property in connection with such an attack as is mentioned in the United Nations Personnel Act 1997 s 2(1).

14 In a case where different parts of the property were differently owned, this includes each part of the property: Visiting Forces Act 1952 s 3(1)(c).

- 15 Ibid s 3(1)(c). As to a charge of attempting, conspiring etc see note 12 supra.
- 16 As to hijacking see AIR LAW vol 2 (2008) PARAS 14, 624.
- 17 Visiting Forces Act 1952 s 3(1)(d) (added by the Protection of Aircraft Act 1973 s 6(1); and amended by the Aviation Security Act 1982 s 40, Sch 2 para 3). The other offences referred to in the text are those mentioned in the Aviation Security Act 1982 s 6(2)(a); see AIR LAW vol 2 (2008) PARA 624. As to a charge of attempting, conspiring etc see note 12 supra.
- 18 It is an offence under ibid s 2 or s 3: see AIR LAW vol 2 (2008) PARAS 628-629.
- 19 It is an offence under ibid s 6(2)(b) or s 6(2)(c): see AIR LAW vol 2 (2008) PARAS 628-629.
- 20 Visiting Forces Act 1952 s 3(1)(e) (added by the Protection of Aircraft Act 1973 s 6(1); and amended by the Aviation Security Act 1982 Sch 2 para 3). As to a charge of attempting, conspiring etc see note 12 supra.
- 21 It is an offence under the Aviation and Maritime Security Act 1990 s 1(2)(a)(ii): see AIR LAW vol 2 (2008) PARA 631.
- 22 Visiting Forces Act 1952 s 3(1)(f) (added by the Aviation and Maritime Security Act 1990 s 53(1), Sch 3 para 1(2)).
- 23 Visiting Forces Act 1952 s 3(1)(g) (added by the Aviation and Maritime Security Act 1990 Sch 3 para 1(2)).
- 24 It is an offence under the Aviation and Maritime Security Act 1990 s 11, s 12 or s 13: see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1212-1214.
- 25 It is any such act as is mentioned in ibid s 14(4)(b), (c) or (d): see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1215.
- 26 Visiting Forces Act 1952 s 3(1)(h) (added by the Aviation and Maritime Security Act 1990 Sch 3 para 1(2)).
- 27 Visiting Forces Act 1952 s 3(1) proviso.
- 28 A certificate issued on behalf of the country concerned, stating that the accused can be dealt with under its law, is conclusive evidence of that fact: ibid s 11(3).
- 29 Ibid s 3(2).
- 30 Ibid s 3(5).

UPDATE

144 Offences exempt from jurisdiction

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 10--Head (2)(d). See also SI 1978/1047 art 3A (added by Sexual Offences Act 2003 s 46(2)) (exception for criminal proceedings, investigations etc).

Visiting Forces Act 1952 Schedule para 1 further amended: Female Genital Mutilation Act 2003 s 7(2). Head (2)(h) now the Female Genital Mutilation Act 2003. For further amendments to the Visiting Forces Act 1952 Schedule para 1 see Sexual Offences Act 2003 Sch 6 para 8, Sch 7.

Head (4). Nuclear Material (Offences) Act 1983 s 2 amended: Terrorism Act 2006 s 14.

NOTE 13--Head (8). Nuclear Material (Offences) Act 1983 s 2 amended: Terrorism Act 2006 s 14.

Add '(10) the Fraud Act 2006.': 1952 Act Schedule para 3(m) (added by Fraud Act 2006 Sch 1 para 2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/145. Trial by United Kingdom courts.

145. Trial by United Kingdom courts.

The restriction¹ on trial by United Kingdom courts² where the offender is connected with a visiting force³ does not preclude the trial of a person by such a court if, as regards England or Wales, the Director of Public Prosecutions⁴ certifies either before or in the course of the trial that the appropriate authority⁵ of the sending country⁶ has notified him that it is not proposed to deal with the case under the law of that country⁷. Furthermore, unless objection has already been made that by reason of that restriction the court is not competent to deal with the case, nothing done or omitted to be done in the course of a trial is affected⁸. After the conclusion of a trial, its validity cannot be affected by anything concerning the restriction if no such objection to the competency of the court was made in the proceedings at any stage before the conclusion of the trial⁹.

Without prejudice to the provisions described above¹⁰, where a person has been tried by a service court¹¹ of the appropriate country, he may not be tried for the same crime by a United Kingdom court¹².

1 I.e. the restriction imposed by the Visiting Forces Act 1952 s 3(1) (as amended): see para 144 ante.

2 For the meaning of 'United Kingdom court' see para 141 note 6 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

3 For the meaning of 'visiting force' see para 140 ante.

4 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq. As regards Scotland and Northern Ireland, the relevant authorities are the Lord Advocate and the Attorney-General for Northern Ireland, respectively: see the Visiting Forces Act 1952 s 3(3)(a).

5 As to the appropriate authority see para 141 note 3 ante.

6 For the meaning of 'sending country' see para 140 note 1 ante.

7 Visiting Forces Act 1952 s 3(3)(a).

8 Ibid s 3(3)(b). On the true construction of s 3 (as amended), it seems that s 3(3)(b) must relate to proceedings in a United Kingdom court: eg matters which have transpired during a trial in such a court before a certificate from the Director of Public Prosecutions, required by s 3(3)(a) (see the text and note 7 supra), is produced (a 'thing done'), or an omission to produce that certificate before or at the outset of the trial (a 'thing omitted').

9 Ibid s 3(3)(c). Note 8 supra, is applicable, mutatis mutandis, to the word 'trial' in this instance also. Thus, for instance, if a member of a visiting force, or of a civilian component of such a force, has been tried, convicted and sentenced in a United Kingdom court for an offence within the scope of the restriction on such trial contained in s 3(1) (as amended) without objection to the competency of the court on that ground having been taken at any stage in the proceedings before the conclusion of the trial, the trial, conviction and sentence will be valid according to United Kingdom law. For the meaning of 'United Kingdom law' see para 141 note 6 ante.

10 I.e. those of ibid s 3 (as amended): see the text and notes 1-9 supra; and para 144 ante.

11 For the meaning of 'service court' see para 143 note 1 ante. 'Tried by a service court' means so tried in the exercise of the powers conferred by ibid s 2 (as amended): see para 143 ante.

12 Ibid s 4(1). Thus, where a person has been so tried, even for an offence for which his trial by a United Kingdom court was not precluded by s 3(1) (as amended), he cannot afterwards be tried for the same offence by a United Kingdom court. If such a person, after being convicted by a service court, is convicted by a United Kingdom court for a different crime, but it appears to the United Kingdom court that the two convictions are

wholly or partly in respect of the same acts or omissions, that court must have regard to the sentence of the service court: s 4(2). As to the proof by certificate of the trial, sentencing and detention under sentence of a service court of a person named in the certificate see para 143 note 14 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/146. Restrictions on coroners' inquests and as to the removal of bodies of deceased persons.

146. Restrictions on coroners' inquests and as to the removal of bodies of deceased persons.

Where a coroner is satisfied that a deceased person had at the time of his death a relevant association with a visiting force¹ he may not hold the inquest unless the Secretary of State² otherwise directs³. If the inquest has begun but not been completed, the coroner must adjourn it, and if a jury has been summoned he must discharge it⁴. Unless the Secretary of State otherwise directs, a coroner must also adjourn an inquest if he is satisfied that a person who is subject to the jurisdiction of a service court⁵ has been, or is being detained with a view to being, charged before a court of the sending country⁶ with the homicide of the deceased person⁷.

An inquest adjourned in any such circumstances may not be resumed except on the direction of the Secretary of State⁸. The body of a person who, at the time of his death, had a relevant association with a visiting force may usually be removed out of England without notice to the coroner⁹.

1 For the meaning of 'relevant association with a visiting force' see para 143 ante. For the meaning of 'visiting force' see para 140 ante.

2 As to the Secretary of State see para 2 ante.

3 See the Visiting Forces Act 1952 s 7(1); and CORONERS vol 9(2) (2006 Reissue) para 959. As to the application of s 7 (as amended) to international headquarters and defence organisations see para 150 post.

4 See *ibid* s 7(1).

5 *Ie* in accordance with *ibid* s 2 (as amended): see para 143 ante. For the meaning of 'service court' see para 143 note 1 ante.

6 For the meaning of 'sending country' see para 140 note 1 ante.

7 Visiting Forces Act 1952 s 7(2). 'Homicide' includes murder, manslaughter, infanticide, aiding, abetting, counselling or procuring suicide and any offence under the law of the country in question which is analogous to any of those offences: s 7(6) (amended by the Suicide Act 1961 s 2(3), Sch 1 Pt III). See also CORONERS vol 9(2) (2006 Reissue) para 960.

8 See the Visiting Forces Act 1952 s 7(3); and CORONERS vol 9(2) (2006 Reissue) para 961.

9 See *ibid* s 7(4), (5); and CORONERS vol 9(2) (2006 Reissue) para 962.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/147. Dispute concerning terms of service, pay or discharge.

147. Dispute concerning terms of service, pay or discharge.

No United Kingdom court¹ may entertain any proceedings with regard to the pay of any person in respect of service as a member of a visiting force², or as a member of a civilian component³ of such a force, or with regard either to the terms of such service or to a person's discharge from such service⁴.

1 For the meaning of 'United Kingdom court' see para 141 note 6 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 For the meaning of 'visiting force' see para 140 ante. As to the application of the Visiting Forces Act 1952 s 6 to international headquarters and defence organisations see para 150 post.

3 As to civilian components of a visiting force see para 141 ante.

4 Visiting Forces Act 1952 s 6. Section 6 has been held not to preclude a United Kingdom court from entertaining a claim for damages for libel: see *Richards v Naum* [1967] 1 QB 620, [1966] 3 All ER 812, CA.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/148. Evidence; proof by certificate.

148. Evidence; proof by certificate.

In any proceedings in a United Kingdom court¹, a certificate issued by or on behalf of the appropriate authority of a country² stating that at the time specified in the certificate a person was or was not a member of a visiting force³ is sufficient evidence of the fact so stated unless the contrary is proved⁴.

A certificate issued by or on behalf of the appropriate authority of a country stating that a body, contingent or detachment of its forces is or was present in the United Kingdom⁵ at a specified time is conclusive evidence, in any proceedings in a United Kingdom court, of the fact so stated⁶; and where, in such proceedings, it is admitted or proved⁷ that such a body, contingent or detachment is or was present in the United Kingdom, it must be assumed, unless the contrary is shown, that the body, contingent or detachment is or was there on the invitation of the United Kingdom government⁸.

Where in any such certificate issued for the purposes of the Visiting Forces Act 1952 reference is made to a person by name, and reference is made in proceedings in a United Kingdom court to a person by that name, the references in the certificate and in the proceedings respectively are deemed to be references to the same person unless the contrary is proved⁹.

Any document purporting to be such a certificate, and to be signed by or on behalf of the authority specified in it, must be received in evidence and, unless the contrary is proved, is deemed to be issued by or on behalf of that authority¹⁰.

1 For the meaning of 'United Kingdom court' see para 141 note 6 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 As to the appropriate authority see para 141 note 3 ante.

3 For the meaning of 'visiting force' see para 140 ante. As to the application of these provisions in relation to designated international headquarters and defence organisations see para 150 post.

4 Visiting Forces Act 1952 s 11(1). The words 'sufficient evidence unless the contrary is proved' are used also in s 11(4) (see para 144 note 8 ante), and are generally taken to mean that the contents of the certificate in question are to be accepted and acted on as true unless evidence to the contrary is produced: see CIVIL PROCEDURE VOL 11 (2009) PARA 897. If, however, such a certificate is self-contradictory on its face, then even though it is not contradicted by extraneous evidence a court may not be justified in regarding it as 'sufficient' evidence: see *Allison v Johnson* (1902) 46 Sol Jo 686. Cf the Visiting Forces Act 1952 s 11(2), (3) (see paras 143 note 14, 144 note 28 ante), where the certificates in question are declared to be 'conclusive evidence' of the facts stated in them; this would seem to preclude any attempt to adduce evidence to the contrary.

5 'Present in the United Kingdom' includes being in transit to the United Kingdom: see *ibid* s 17(4); and para 140 ante.

6 *Ibid* s 16(1)(a).

7 *Ie* whether by a certificate issued under *ibid* s 16(1)(a), or otherwise: see s 16(1)(b).

8 *Ibid* s 16(1)(b).

9 *Ibid* s 16(2).

10 *Ibid* s 16(3). Where any certificate is required to be issued by or on behalf of the appropriate authority of a country under any provision of the Visiting Forces Act 1952, and the document purports to be signed by or on

behalf of an authority of that country, that authority is deemed to be the appropriate authority for the purposes of the provision in question unless the contrary is proved: s 16(3).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/149. Settlement of claims against visiting forces.

149. Settlement of claims against visiting forces.

The Secretary of State for Defence¹ may make arrangements for claims² against members of visiting forces³, or other persons connected with such forces to whom the arrangements relate, to be satisfied by him out of money to be provided by Parliament⁴. He must take the necessary steps for securing that the persons concerned are informed of the nature and operation of the arrangements which he has made⁵.

1 As to the Secretary of State see para 2 ante.

2 In respect of acts or omissions of any description: see the Visiting Forces Act 1952 s 9(1) (as amended: see note 4 infra). See also *Holland v Lampen-Wolfe* [2000] 3 All ER 833, [2000] 1 WLR 1573, HL.

3 For the meaning of 'visiting force' see para 140 ante. As to the application of the Visiting Forces Act 1952 s 9 (as amended) to designated international headquarters and defence organisations see para 150 post.

4 Ibid s 9(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). The payments made by the Secretary of State are to be of such amounts as may either be adjudged by any United Kingdom court or agreed between the claimant and the Secretary of State or such other authority as may be provided by the arrangements: Visiting Forces Act 1952 s 9(1). For the meaning of 'United Kingdom court' see para 141 note 6 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

5 Ibid s 9(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/1. THE LEGAL POSITION OF THE ARMED FORCES/ (8) VISITING FORCES/ (iv) Restriction on Jurisdiction of United Kingdom Courts/150. International headquarters and defence organisations.

150. International headquarters and defence organisations.

Her Majesty is empowered by the International Headquarters and Defence Organisations Act 1964 to designate by Order in Council¹, for the purposes of that Act, any international headquarters² or defence organisation which has been or is about to be set up in pursuance of any arrangements for common defence to which Her Majesty's United Kingdom government is a party³. Certain provisions of the Visiting Forces Act 1952 have been applied, with adaptations, to the designated headquarters and to certain persons connected with them⁴. The provisions so applied are those relating to:

- 33 (1) the exercise of powers by service courts and authorities of countries sending visiting forces⁵;
- 34 (2) the restriction, as respects certain offences, of trial by United Kingdom courts of offenders connected with visiting forces⁶;
- 35 (3) the restriction on proceedings in respect of the terms of service of members of visiting forces⁷;
- 36 (4) coroners' inquests and the removal of bodies of deceased persons⁸;
- 37 (5) the application to visiting forces of law relating to home forces⁹;
- 38 (6) the settlement of claims against visiting forces¹⁰;
- 39 (7) evidence¹¹; and
- 40 (8) the proof of facts by certificate¹².

Her Majesty is also empowered by Order in Council to extend the provisions of the International Headquarters and Defence Organisations Act 1964 to the Channel Islands and the Isle of Man, and to any colony, subject to any adaptations, modifications or exceptions as may be specified in the Order¹³.

The Visiting Forces and International Headquarters (Application of Law) Order 1999¹⁴ applies, *mutatis mutandis*, to headquarters designated under the International Headquarters and Defence Organisations Act 1964 as it does to visiting forces¹⁵.

1 No recommendation to make any such Order in Council may be made to Her Majesty in Council unless a draft of the proposed order has been laid before Parliament and approved by a resolution of each House: International Headquarters and Defence Organisations Act 1964 s 1(4). Any such order may be varied or revoked by a subsequent order: s 1(3).

2 'Headquarters' means a headquarters or organisation designated by an Order in Council under *ibid* s 1 (see the text and note 3 *infra*): s 1(2), Schedule para 1(1).

3 *Ibid* s 1(1). The International Headquarters and Defence Organisations (Designation and Privileges) Order 1965, SI 1965/1535 (as amended) has been made, which designates the following headquarters and organisations, and certain persons connected with them, for the purposes of the International Headquarters and Defence Organisations Act 1964: the Supreme Headquarters Allied Powers Europe (SHAPE); the Headquarters of the Supreme Allied Commander Atlantic (SACLANT); the Headquarters Allied Forces North Western Europe (AFNORTHWEST); the Headquarters Allied Air Forces North Western Europe (AIRNORTHWEST); the Headquarters Allied Naval Forces North Western Europe (NAVNORTHWEST); the Headquarters Maritime Air Forces North West (MARAINORTHWEST); the Headquarters Submarine Forces North West (SUBNORTHWEST); the Headquarters Allied Forces Eastern Atlantic Area (EASTLANT); the Headquarters Maritime Air Forces Eastern Atlantic Area (MARAIREASTLANT); the Headquarters Submarine Forces Eastern Atlantic Area (SUBEASTLANT); the Headquarters United Kingdom-Netherlands Amphibious Force (UKNLAF); the Headquarters United Kingdom-Netherlands Landing Force (UKNLLF); the NATO Airborne Early Warning Force Headquarters and NATO E-3A

Component: art 2, Schedule Pt II (substituted by SI 1999/1735). See also the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 3(2), Sch 2 (which applies that Order to the same headquarters). The legal capacity of a body corporate and certain immunities from legal process are conferred on SHAPE and SACLANT: International Headquarters and Defence Organisations (Designation and Privileges) Order 1965, SI 1965/1535, arts 4, 5(1), Schedule Pt I (amended by SI 1994/1642). All the headquarters and organisations are accorded the same privileges as respects the inviolability of official archives as are accorded to an envoy of a foreign sovereign power accredited to Her Majesty: International Headquarters and Defence Organisations (Designation and Privileges) Order 1965, SI 1965/1535, art 3.

4 International Headquarters and Defence Organisations Act 1964 s 1(2), Schedule paras 3-8. Any expression used in the Schedule and in the Visiting Forces Act 1952 has the same meaning in that Schedule as in that Act, except that 'dependant' does not include any person who is a holder of British nationality or is ordinarily resident in the United Kingdom: International Headquarters and Defence Organisations Act 1964, Schedule para 1(2). As to the meaning of 'United Kingdom' see para 20 note 1 ante. The International Headquarters and Defence Organisations Act 1964 refers to citizens of the United Kingdom and colonies, but this form of citizenship has been replaced by new categories of citizenship under the British Nationality Act 1981: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 5 et seq.

5 Ie the Visiting Forces Act 1952 s 2 (as amended): see para 143 ante. A military member of a headquarters who belongs to a country to which s 2 (as amended) applies is included among the persons subject to the jurisdiction of that country's service courts and authorities under s 2 (as amended), and s 2(6) (as amended) applies to him as it does to members of a visiting force: International Headquarters and Defence Organisations Act 1964 Schedule para 3(1). This does not apply to a military member of a headquarters who became, or last became, a member of the forces of the country to which he belongs while he was in the United Kingdom, unless it is shown that he consented to do so: Schedule para 3(2). For the meaning of 'service court' see para 143 note 1 ante. For the meaning of 'visiting force' see para 140 ante.

6 Ie the Visiting Forces Act 1952 s 3 (as amended): see paras 144-145 ante. For the meaning of 'United Kingdom court' see para 141 note 6 ante. Section 3 (as amended) applies to a person charged with an offence against United Kingdom law who was at the relevant time a member of a headquarters and belonged to a country to which s 3 (as amended) applies as though he were a member of a visiting force or a civilian member of such a force, with appropriate modifications: see the International Headquarters and Defence Organisations Act 1964 Schedule para 4. For the meaning of 'United Kingdom law' see para 141 note 6 ante. 'Member of a headquarters' means military member or civilian member of a headquarters: Schedule para 1(1). 'Military member of a headquarters' means a member of any country's forces for the time being appointed to serve in the United Kingdom under the orders of a headquarters, except a member of the home forces: Schedule para 1(1). 'Civilian member of headquarters' means a person who: (1) holds such a passport as is mentioned in the Visiting Forces Act 1952 s 10(1)(a) (see para 141 ante), containing an uncanceled entry, made by the proper authority outside the United Kingdom or by the headquarters, stating that he is a civilian member of the headquarters, and an uncanceled mark made on behalf of the Secretary of State signifying that the entry has been noted and approved; and (2) whose recognition has not been withdrawn by a written notice given to the proper authority on behalf of the Secretary of State: International Headquarters and Defence Organisations Act 1964 s 1(2), Schedule para 1(1), 2(1). As to the Secretary of State see para 2 ante.

7 Ie the Visiting Forces Act 1952 s 6: see para 147 ante.

8 Ie *ibid* s 7 (as amended): see para 146 ante. For this purpose s 7 (as amended) applies to a deceased person who at the time of his death was a member of a headquarters and belonged to a country to which s 7 (as amended) applies, or was a dependant of such a member: see the International Headquarters and Defence Organisations Act 1964 Schedule para 6.

9 Ie the Visiting Forces Act 1952 s 8: see para 142 ante.

10 Ie *ibid* s 9 (as amended): see para 149 ante.

11 The provisions of *ibid* s 11 (see paras 143-144, 148 ante) are not in themselves applied to headquarters and persons connected with them, but the International Headquarters and Defence Organisations Act 1964 Schedule para 8 provides similarly for the proof by certificate of questions as to whether at a specified time a person was or was not a military or civilian member of the headquarters by whose authority the certificate is issued; if he was, whether or not he belonged to a specified country; and as to whether or not an alleged offence, if committed by a person so specified, arose out of and in the course of his duty as a member of that headquarters.

12 Ie the Visiting Forces Act 1952 s 16(3) (see para 148 ante), which applies to any document purporting to be any such certificate as is mentioned in the International Headquarters and Defence Organisations Act 1964 Schedule para 8 (see note 11 *supra*), and to its issuing authority, as it applies in relation to such a certificate and authority as are mentioned in that provision: Schedule para 9.

13 See *ibid* s 2 (amended by the British Nationality Act 1981 s 52(8), Sch 9). At the date at which this volume states the law no such Order had been made. As to the meaning of 'colony' see para 20 note 4 ante; and COMMONWEALTH vol 13 (2009) PARA 705.

14 See the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736 (as amended).

15 See *ibid* art 3(2), Sch 2. Additionally, several enactments which have come into operation subsequently to the International Headquarters and Defence Organisations Act 1964 expressly provide for their application to headquarters designated under that Act: see para 142 note 11 ante.

UPDATE

150 International headquarters and defence organisations

NOTE 3--SI 1965/1535 Schedule Pts I, II substituted for Schedule Pt I: SI 2009/704. SI 1999/1736 Sch 2 amended: SI 2009/705.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/151. Raising and maintenance of a naval force.

2. NAVAL FORCES

(1) THE ROYAL NAVY

(i) Command, Entry into and Service in the Royal Navy

151. Raising and maintenance of a naval force.

There is no statutory restriction on the prerogative of the Crown to raise and maintain a naval force¹. However, indirect control is exercised by Parliament in the granting of supplies to meet the annual expenses and in passing the annual continuation order and the quinquennial Act continuing the Naval Discipline Act 1957²; and conditions of entry and service of ratings in the Royal Navy are largely regulated by statute³. The discretion of the Crown, whether restricted by statute or otherwise, is in practice exercised by the Admiralty Board under the Defence Council⁴.

The personnel of Her Majesty's naval forces⁵ are divided into two grades, officers and ratings⁶.

1 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 884 et seq. Cf the position regarding the army, where the Crown is permitted to engage a standing army only as provided by statute: see para 194 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 883.

2 See para 3 ante.

3 See the Armed Forces Act 1966 s 2 (amended by the Armed Forces Act 1976 s 2; the Army Act 1992 s 2; and the Armed Forces Act 1996 ss 2, 35(2), Sch 7 Pt III). This empowers the Defence Council to make regulations by statutory instrument as to entry into the forces and as to the terms of service. For provisions relating specifically to the Royal Navy see the Armed Forces Act 1966 ss 3-10 (as amended); the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834 (as amended); and paras 156-157 post. Entry into the Royal Navy does not affect domicile: see CONFLICT OF LAWS vol 8(3) (Reissue) para 49. It should also be noted that service in the armed forces is increasingly subject to general employment-related legislation, albeit that exemptions and derogations remain in some areas.

4 The Admiralty Board is authorised to discharge any of the functions of the Defence Council: see the Defence (Transfer of Functions) Act 1964 s 1(1)(b), (5); and para 2 ante.

5 As to the composition of Her Majesty's naval forces see paras 5-6 ante.

6 For the meaning of 'officer' see para 152 post. For the meaning of 'rating' see para 156 note 1 post.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act

2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

151 Raising and maintenance of a naval force

TEXT AND NOTE 3--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/152. Officers.

152. Officers.

An officer, in relation to Her Majesty's naval forces, is any person of or above the rank of cadet¹. Acting sub-lieutenants and midshipmen are subordinate officers. Since 1 April 1999 there has been a three-tier career structure for commissioned officers. All officers, whether recruited from the civilian sector or from within the naval service, join on an initial commission of up to 12 years (subject to retirement at age 55). There are opportunities for transfer to a career commission, allowing up to 16 years service from age 21 (or from the date of entry as an officer if later), and then to a full term commission with a retirement age of 55².

¹ Naval Discipline Act 1957 s 133(1); Queen's Regulations for the Royal Navy (Consolidated Edn, 1997), Explanation of Terms p xxiv. In practice, the rank of midshipman is the most junior rank currently held by an officer.

² See BR 8373 *Officers' Career Regulations* ch 2.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/153. Issue of commissions.

153. Issue of commissions.

Commissions are issued on appointment or promotion to the rank of sub-lieutenant, surgeon sub-lieutenant or surgeon lieutenant¹. Chaplains are issued with a commission on appointment but hold no naval rank; they retain in the navy the position to which their office would entitle them on shore². A further commission is issued to the Chaplain of the Fleet on appointment to that office³.

1 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para 0302.

2 Ibid Ch 3 paras 0302, 0304. A chaplain's duties and powers are laid down in Ch 16. A chaplain is, nevertheless, subject to naval discipline: see the Naval Discipline Act 1957 s 111(8). As to discipline generally see para 302 et seq post. As to naval chaplains see further ECCLESIASTICAL LAW. Commanding officers must cause public worship to be performed in their ships: see s 1.

3 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para 0304.2. The Chaplain of the Fleet is granted the ecclesiastical dignity of archdeacon, under the Archbishop of Canterbury, while holding the office: Ch 3 para 0304.2.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

153 Issue of commissions

TEXT AND NOTE 2--The Secretary of State may by regulations provide that such references in the Armed Forces Act 2006 to an officer, or to an officer of a particular description, as may be prescribed by the regulations include references to a naval chaplain or to a naval chaplain of a description prescribed by the regulations: s 371(1). The regulations may make such modifications of the Armed Forces Act 2006 as appear appropriate in consequence of the fact that naval chaplains do not have a rank: s 371(2). For these purposes 'naval chaplain' means a chaplain in the Royal Navy, the Royal Fleet Reserve or the Royal Naval Reserve: s 371(3). See the Armed Forces (Naval Chaplains) Regulations 2009, SI 2009/826.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/154. Entry of officers and promotion to officer rank.

154. Entry of officers and promotion to officer rank.

The entry of officers is not regulated by statute but by regulations made by the Admiralty Board which govern the educational, physical and other standards required¹. Officers enter by one of three schemes: naval college entry², university cadetship entry³ and direct graduate entry⁴.

Ratings who obtain the required standards, including educational standards, and successfully complete a selection process and training course may be promoted to the officer corps. Such personnel join the Warfare, Engineering, Supply, Royal Marine or Medical Services branches as appropriate, on an initial commission or for such period, and in an appropriate rank, as determined by, and at the discretion of, the Admiralty Board.

Officers who are not due for compulsory retirement have no automatic right to voluntary retirement or to resign their commissions, but may apply for permission to do so⁵.

¹ The regulations governing entry are not contained in a statutory instrument, and are not set out in this work. As to the Admiralty Board see para 2 ante.

² Ie for those joining direct from school and entering at the rank of midshipman.

³ Ie for those already at university or about to start there. Such entrants usually undergo a period of general naval training before commencing their studies. Cadetship entrants are paid whilst at university and are entered initially as midshipmen.

⁴ Ie for those who have obtained a United Kingdom degree (or the equivalent). Entry is at the rank of acting sub-lieutenant.

⁵ See *R v Cumming, ex p Hall* (1887) 19 QBD 13, DC; *Hearson v Churchill* [1892] 2 QB 144, CA. Detailed guidance is set out in BR 8373 *Officers' Career Regulations* ch 41.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/155. Command.

155. Command.

Command is the authority vested in an individual of the armed forces for the direction, co-ordination, and control of military forces.

All officers and ratings¹ have power of command over their subordinates, by virtue of their relative rank and seniority² over them, regardless of branch, in the maintenance of good order and discipline and in any normal activity, work or undertaking³. Officers of the Royal Navy and the Royal Marines (except the Royal Marine Band Service) and seaman officers of the Royal Naval Reserve have vested in them military command, which is the authority to exercise command of non-sea-going ships, naval shore establishments, aircraft and boats. Military command may be conferred on other officers and on ratings by appointment or by direction of a superior officer who is himself entitled to exercise military command⁴. Authority to exercise sea command, that is the command of sea-going ships of the Royal Navy, is limited to officers of flag rank when holding certain appointments and officers of the Royal Navy and Royal Naval Reserve who are borne for seaman duties in sea-going ships. This command may be conferred by explicit direction by superior authority entitled to sea command on other officers and on ratings⁵. The chain of command descends, with some exceptions, first to the executive officer and then by seniority through those entitled to exercise the form of command involved. Certain officers and ratings are given special command, by virtue of their special office, duties, skill, ability or experience, to give lawful orders to their equals or superiors, but such command is only exercisable while the particular duty or situation requiring it exists⁶. The prime example of special command is that of the commanding officer who has command over all officers of whatever relative rank whilst they are in the ships or establishment of the commanding officer⁷.

In so far as powers of command depend on rank or rate, an officer, warrant officer or non-commissioned officer of any of Her Majesty's military or air forces, acting with, or being a member of a body of any such force acting with, a body of Her Majesty's naval forces, has the same powers as a person of Her Majesty's naval forces of corresponding rank or rate⁸.

1 'Officers and ratings' includes all officers, warrant officers, chief petty officers, petty officers and non-commissioned officers, ratings and other ranks of the Royal Navy and Royal Marines: Queen's Regulations for the Royal Navy (Consolidated Edn, 1997), Explanation of Terms p xxv.

2 For the relative ranks of officers and ratings see *ibid* Ch 3 para J.0381.

3 *Ibid* Ch 3 para 0331.

4 *Ibid* Ch 3 para 0332.2.

5 *Ibid* Ch 3 para 0333.

6 *Ibid* Ch 3 para 0335.

7 See *ibid* Ch 3 para 0334.2.

8 Naval Discipline Act 1957 s 122(1). The corresponding ranks and rates are set out in the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para J.0381, Table 3-1.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

155 Command

TEXT AND NOTES--An officer, warrant officer or non-commissioned officer of a regular or reserve force who is subject to service law ('A') has, over members of any other such force who are of inferior rank or rate to A, such powers of command as are dependent on rank or rate: Armed Forces Act 2006 s 354. For the meaning of 'subject to service law' see PARA 303-313.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/156. Engagement of ratings.

156. Engagement of ratings.

Three methods of recruitment of ratings¹ have been employed: forcible impressment, conscription for national service and voluntary enlistment². Only voluntary enlistment is at present used. The service of men in the navy has, since early times, been partially regulated by statute³. The Defence Council is empowered to make regulations by statutory instrument regulating the terms for which persons entering the Royal Navy may be entered and the conditions of service⁴. Such regulations provide for a rating to be entered in the Royal Navy for a term beginning with the date of his engagement to serve in the Royal Navy and ending on a date falling not later than 22 years after the date of engagement or, in the case of a person who enters before attaining the age of 18 years, not later than 22 years after the date of that person attaining the age of 18 years⁵. The term may be wholly of naval service or may be a term partly of naval service and partly of service with the Royal Fleet Reserve⁶.

A Royal Navy rating may give 12 months' notice in writing to his commanding officer⁷ of his desire to be transferred to the reserve, which means that the person leaves the Royal Navy but with a liability for recall⁸. Once that notice period has expired, he is transferred to the reserve⁹. Such notice may not be given until the expiration of two years and six months from the date of completion of his period of initial training¹⁰. Where a person who has been permitted to undergo a course of instruction of a duration of not less than eight weeks or receive any other benefit or advantage consents in writing to be restricted in the exercise of the right to give 12 months' notice, he may not exercise that right before the expiration of the appropriate period which has been specified in such consent¹¹. A person transferred to the reserve in consequence of the exercise of one of these rights must serve in the reserve until the expiration of the term of his engagement to serve in the Royal Navy or for such shorter period as the competent naval authority in his case determines¹².

Recruits who have not previously entered the Royal Navy have the right to claim discharge by giving notice in writing before the expiration of a period of six months beginning with the date of their engagement, once they have completed 28 days' service¹³.

For entry into the naval service a candidate must: (1) at all times since birth have been a British, British overseas territories, Irish or Commonwealth citizen¹⁴; and (2) have been born in the United Kingdom, or a country or territory which is (or was then) within the Commonwealth or Ireland¹⁵. If, at the time when a rating would be entitled to be discharged or would fall to be transferred to the Royal Fleet Reserve¹⁶, a call out order for national danger, great emergency or attack on the United Kingdom, or for warlike or certain other operations¹⁷, is in force authorising the call out for permanent service of members of the Royal Fleet Reserve¹⁸, he may be retained in the Royal Navy for such period as the competent authority¹⁹ may order, and his service may be prolonged accordingly²⁰. If, while a rating is so detained in service, it appears to the competent authority that his service can be dispensed with, he is entitled to be discharged or transferred to the Royal Fleet Reserve as the case may require²¹.

Where a state of war exists between Her Majesty and a foreign power, a rating entitled to discharge or to transfer to the Royal Fleet Reserve may by declaration made before his commanding officer agree to continue his service while that state of war exists²². Where it appears to Her Majesty that national danger is imminent or that a great emergency has arisen, she may by order, signified under the hand of the Secretary of State, provide that ratings who would otherwise be transferred to the Royal Fleet Reserve are to continue in service in the Royal Navy²³.

Every rating entitled to be discharged or to transfer to the Royal Fleet Reserve must be discharged or transferred with all convenient speed, but until discharge or transfer he remains subject to the Naval Discipline Act 1957²⁴. A rating entered for service in the Royal Navy in the United Kingdom who, when entitled to discharge or transfer to the Royal Fleet Reserve, is serving out of the United Kingdom, is entitled to discharge or transfer in the United Kingdom, although he may request to be discharged or transferred at the place where he is serving²⁵.

1 'Rating' means a member of Her Majesty's naval forces of or below the rate of warrant officer; and any reference in the Naval Discipline Act 1957 to a rating, or to a rating of any particular rate, includes a reference to any warrant officer who is subject to that Act without being a member of those forces, and to any non-commissioned officer, marine, soldier or airman who is so subject, or, as the case may be, to any such warrant officer or non-commissioned officer of rank corresponding to that rate: s 133(2) (substituted by the Armed Forces Act 1971 s 75, Sch 3 para 5(4)). For the meaning of 'Her Majesty's naval forces' see para 7 ante. As to corresponding ranks see the Naval Discipline Act 1957 s 133(5) (as amended); and para 1 note 7 ante.

2 As to impressment see para 160 post. All the enactments relating to national service, that is, a system of compulsory service in the armed forces or in the civil defence organisation, have been repealed. As to voluntary enlistment see the text and notes infra.

3 1 Bl Com (14th Edn) 419. The earliest statute seems to be 2 Ric 2 State 1 c 4 (Mariners) (1378) (repealed).

4 See the Armed Forces Act 1966 s 2 (as amended); and para 151 ante. In exercise of this power, the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834 (as amended) have been made. A person who entered naval service under a term of service which he entered into before 1 September 1982 (ie the commencement of the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834: see reg 1) may elect to be treated as if he had entered under the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834 (as amended): see reg 3A(1) (reg 3A added by SI 1985/2003). As to the Defence Council see para 2 ante.

5 Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, regs 2(2), 3(1). At the date at which this volume states the law ratings are entered for a period of 22 years' service, but such service may be terminated early by giving notice: see the text and notes 7-11 infra. A person who has attained the age of 16 years but has not attained the age of 19 years 7 months may be entered for a special term of service: see reg 3(1) (amended by SI 1983/897); and the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 3(3) (added by SI 1986/2074).

A person in naval service may, at any time during the term for which he is entered, give to his commanding officer notice of his desire to continue in naval service after the end of that term: see the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 8 (amended by SI 1985/2003; SI 2000/1771).

6 Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 3(2). As to the Royal Fleet Reserve see para 175 post. A person who has attained the age of 16 years but has not attained the age of 19 years 7 months may be entered for a special term of service: see reg 3(2) (amended by SI 1983/897); and the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 3(3) (as added: see note 5 supra).

7 'Commanding officer' means the commanding officer of the ship, establishment or unit in which the person in question is serving: see *ibid* reg 2(2).

8 See *ibid* reg 4(1) (reg 4 substituted by SI 2000/1771).

The right to give 12 months' notice of transfer to the reserve may not be exercised by a person to whom the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 3A(1) (as added) (see note 4 supra) applies unless he has completed a certain period of service: see reg 3A(2) (as added (see note 4 supra); and amended by SI 2000/1771; SI 2001/1521).

9 See the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 4(1) (as substituted: see note 8 supra).

10 See *ibid* reg 4(2) (as substituted (see note 8 supra); and amended by SI 2001/1521). The period of initial training (the 'Standard Initial Training Period') is explained in BR 8748 *Terms and Conditions of Service for RN and QARRNS ratings and RM other ranks*.

11 Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 5(1) (amended by SI 2000/1771). 'Appropriate period' means, in relation to permission to undergo a course of instruction, a period of not more than 18 months and, in relation to the receipt of any other benefit or advantage, a period of not more than four years and six months: Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 5(2).

The appropriate period begins with the date on which the person completes such course of instruction or such other date as is mentioned in the consent: see reg 5(1).

12 Ibid reg 6. For these purposes, the competent naval authorities are the Defence Council, the Admiralty Board and the Naval Secretary: see reg 2(2), Sch 1 (entry amended by SI 2000/1771). As to the Admiralty Board see para 2 ante.

13 See the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 7(1), (2) (reg 7 substituted by SI 2000/1771). Such recruits are entitled to be discharged at the end of a period of 14 days beginning on the date on which notice was given, although in certain circumstances discharge may be postponed (see the Armed Forces Act 1966 s 4 (as amended); and the text and notes 14-21 infra): see the Royal Navy Terms of Service (Ratings) Regulations 1982, SI 1982/834, reg 7(3), (4) (as so substituted). In calculating any period of time for the purposes of reg 7 (as substituted), no account is to be taken of any day during the whole or part of which the person was absent either on leave or for an unauthorised purpose: reg 7(5) (as so substituted).

14 As to citizenship generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 5 et seq.

15 See BR 689 *Recruiting Instructions for the Naval Service*. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

16 For these purposes, references to discharge do not include references to discharge of a rating from the Royal Navy where on such discharge he is, under the terms of his engagement, liable to serve in the Royal Fleet Reserve after the completion of his term of service in the Royal Navy (Armed Forces Act 1966 s 4(8)), and references to transfer of a person to the Royal Fleet Reserve are to be construed as references to his being entered in the Royal Fleet Reserve where he is so entered in pursuance of a liability to serve therein after the completion of his term of service in the Royal Navy, being a liability incurred under the terms of his engagement to serve in the Royal Navy (Armed Forces Act 1966 s 4(7)). For these purposes, 'rating' means a member of the Royal Navy of or below the rate of warrant officer: s 14(1) (definition amended by the Armed Forces Act 1971 s 75, Sch 3 para 7).

17 The orders under the Reserve Forces Act 1996 ss 52, 54, 56: see para 232 post.

18 See the Armed Forces Act 1966 s 4(1) (substituted by the Reserve Forces Act 1996 s 126, Sch 7 para 7(2)).

19 'Competent authority' means the Defence Council or an officer prescribed by regulations of the Defence Council to act for these purposes: Armed Forces Act 1966 s 14(1). Such regulations may prescribe different officers to act as competent authority for different purposes of Pt II (ss 2-14) (as amended): s 14(2). Any power to make regulations conferred on the Defence Council by any provision of Pt II (as amended) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 14(3) (added by the Armed Forces Act 1996 s 4(3)). The competent authority with delegated powers is currently the Naval Secretary.

20 Armed Forces Act 1966 s 4(1A) (s 4(1A), (1B), (1C) added by the Reserve Forces Act 1996 s 126, Sch 7 para 7(2)). The period for which a rating may be retained in service is limited as follows:

- 15 (1) a rating who would otherwise have fallen to be transferred to the Royal Fleet Reserve may not be retained for longer than the period for which, if the assumptions that:
 9. (a) he was transferred to the Royal Fleet Reserve in time to be called out for permanent service starting on the relevant date (Armed Forces Act 1966 s 4(1C)(a) (as so added)); and
 - 9
 10. (b) he was so called out on the authority of the call out order which justified his retention in service (s 4(1C)(b) (as so added)),
 - 10
 - 16 are made in relation to him, he could have been required to serve on being called out under the Reserve Forces Act 1996 Pt VI (ss 50-64) (see para 232 post) (Armed Forces Act 1966 s 4(1B) (a) (as so added));
 - 17 (2) a rating who would otherwise have been discharged may not be retained for longer than 12 months (s 4(1B)(b) (as so added)).

A rating who is retained in service is, if not transferred or discharged sooner, entitled to be transferred to the Royal Fleet Reserve or discharged, as the case may require, at the end of whichever of the periods in head (1) or head (2) supra applies to him: s 4(1B) (as so added). In relation to ratings serving outside the United

Kingdom, references to being entitled to be transferred to the Royal Fleet Reserve are to be construed as references to being entitled to be sent to the United Kingdom with all convenient speed for the purpose of being transferred: s 4(7).

21 Ibid s 4(5).

22 See *ibid* s 4(6). If it is so specified in the declaration, the rating is entitled to be discharged or transferred to the Royal Fleet Reserve as the case may require at the expiration of three months notice given by him: see s 4(6) proviso. Where a rating is retained in service by virtue of these provisions but would otherwise have fallen to be transferred to the Royal Fleet Reserve: (1) any period for which he is liable to serve in the Royal Fleet Reserve after the completion of his service in the Royal Navy is to be reduced by the period for which he is so retained; and (2) the period for which he is so retained is to be treated as a period of relevant service for the purposes of any provision of the Reserve Forces Act 1996 Pt IV (ss 28-37), Pt V (ss 38-49), Pt VI or Pt VII (ss 65-77): Armed Forces Act 1966 s 4(6A) (added by the Reserve Forces Act 1996 s 126, Sch 7 para 7(3)).

'Commanding officer', in relation to a person, means such officer having powers of command over that person as may be determined by or under regulations of the Defence Council: Armed Forces Act 1966 s 14(2).

23 See *ibid* s 5(1) (amended by the Reserve Forces Act 1996 s 126, Sch 7 para 7(5)). This provision, it seems, enables the retention of ratings who would otherwise be transferred to the Royal Fleet Reserve in circumstances additional to those set out in the text. Where an order is made under the Armed Forces Act 1966 s 5(1) (as amended), the occasion of it must be communicated to Parliament and it may be revoked by a subsequent order of Her Majesty: s 5(2), (3). As to the Secretary of State see para 2 ante.

24 Ibid ss 6(1), 7(1).

25 See *ibid* ss 6(2), 7(2). Such a rating is entitled to be conveyed free of cost to the place at which he entered for service in the Royal Navy or any place at which he intends to reside: see ss 6(4), 7(3). On discharge a rating is entitled to a certificate of discharge: see s 6(3) (amended by the Armed Forces Act 1996 s 3(2)).

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

156 Engagement of ratings

TEXT AND NOTES--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTES 1-13--SI 1982/834 replaced by the Royal Navy Terms of Service (Ratings) Regulations 2006, SI 2006/2918 (amended by SI 2009/1089).

TEXT AND NOTES 14, 15--As to restrictions on aliens in the regular forces, see now the Armed Forces Act 2006 s 340. See also the Armed Forces (Aliens) Regulations 2009, SI 2009/835, which provide that the Armed Forces Act 2006 s 340 does not apply to a citizen or national of Nepal who serves, or has for not less than five years served, in the Brigade of Gurkhas. For the meaning of 'regular forces' see PARA 191.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/157. Statements, declarations and evidence of birth on entry.

157. Statements, declarations and evidence of birth on entry.

Any person who, on offering himself to be entered for service in the Royal Navy, knowingly makes a false answer to any question put to him in connection with his entry by, or by the direction of, an officer or other person authorised under regulations made by the Defence Council¹ to enter persons for such service, is guilty of an offence². Any person who has made such a false answer is, if he has since become and remains subject to the Naval Discipline Act 1957, liable to imprisonment for a term not exceeding three months or any less punishment authorised by that Act³. A rating who has made false statements in the documents signed on engagement may be discharged from the service by the appropriate commander-in-chief or flag officer⁴.

Where an officer or other person authorised under Defence Council regulations to enter persons for naval service is satisfied by the production of a certified copy of an entry in the register of births, or by any other evidence appearing to him to be sufficient, that a person offering to be entered for naval service has or has not attained the appropriate minimum age⁵, that person is to be deemed for the purposes of entry to have attained, or, as the case may be, not to have attained, that age⁶. Where, in the case of a person who has signified acceptance of his being entered for service in the Royal Navy and who has received pay as a rating⁷, there has been a failure to comply with any entry requirement, or there exists any other grounds upon which the validity of his entry could be questioned, and that person, within three months of signifying his acceptance claims his entry is invalid, then, if his claim is well founded, he must be discharged with all convenient speed and be released from any liability under his entry to serve in a reserve force⁸. If he makes no such claim within those three months, then as from the expiration of that period he is deemed to have been validly entered for service in the Royal Navy, notwithstanding any such failure to comply or other ground⁹.

1 As to the Defence Council see para 2 ante.

2 Armed Forces Act 1966 s 8(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 1 on the standard scale: s 8(1) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see para 40 note 4 ante.

3 Naval Discipline Act 1957 s 34A (added by the Armed Forces Act 1971 s 25). See further para 413 post. As to the persons subject to the Naval Discipline Act 1957 see paras 306, 309 et seq post.

4 See BR 8748 *Terms and Conditions of Service for RN and QARRNS ratings and RM other ranks* arts 0109, 1009(2).

5 'Appropriate minimum age' means the age of 18 or, in a case falling within any class for which a lower age is for the time being prescribed by regulations of the Defence Council, that lower age: Armed Forces Act 1966 s 9(3) (amended by the Armed Forces Act 1971 s 63(2)). Such regulations are not statutory instruments and are not recorded in this work. A person under the appropriate minimum age may not be entered for service in the Royal Navy unless written consent has been given: (1) if he is living with both or one of his parents, by the parents or parent; (2) if he is not living with both or one of his parents, but a person (whether a parent or not) whose whereabouts are known or can after reasonable inquiry be ascertained has parental rights and powers in respect of him, by that person; (3) if there is no such person as is mentioned in head (2) supra or if after reasonable inquiry it cannot be ascertained whether there is any such person, by any person in whose care (whether in law or in fact) he may be: Armed Forces Act 1966 s 9(1).

6 Ibid s 9(2).

7 For the meaning of 'rating' see para 156 note 1 ante.

8 Armed Forces Act 1966 s 10(1)(a). Where a person was under the appropriate minimum age when he signified his acceptance, the claim may be made by a person whose consent was required: see s 10(2). 'Appropriate minimum age' has the same meaning as in s 9 (as amended) (see note 5 supra): s 10(3). Such a person is deemed to be a rating until the end of the period of three months or until his discharge: s 10(1)(c).

9 Ibid s 10(1)(b). Nothing in s 10(1)-(3) (as amended) is to prejudice the determination of any question as to the term for which a person was entered or as preventing the discharge of a person who has not claimed his discharge: s 10(4).

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

157 Statements, declarations and evidence of birth on entry

TEXT AND NOTES--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/158. Service.

158. Service.

Where a person is appointed or drafted to one of Her Majesty's ships¹ or naval establishments² for duty in any or any other of Her Majesty's ships, vessels³ or naval establishments, he must be treated for the purposes of naval discipline as belonging to the ship or establishment to which he is appointed or drafted⁴. An officer⁵ or rating⁶ of Her Majesty's naval forces may be attached temporarily to any of Her Majesty's military or air forces⁷.

A person is deemed to be on active service when serving in or with a force which is engaged in operations against an enemy⁸, when situated in an area in which some such operations are taking place, or when engaged elsewhere than in the United Kingdom⁹ in operations for the protection of life and property¹⁰. Where any of Her Majesty's naval forces are serving outside the United Kingdom, and it appears to the commander-in-chief or flag officer in operational command of that force¹¹, that the force should be deemed to be on active service, that officer may declare that for a period, not exceeding three months, that force is to be deemed to be on active service¹². Such a period may be prolonged for further periods of three months¹³. Where possible, the consent of the Secretary of State to the declaration must be obtained¹⁴. The Secretary of State may direct that any declaration is to cease to have effect¹⁵.

1 For the meaning of 'Her Majesty's ships' see para 6 note 3 ante.

2 For the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

3 For the meaning of 'Her Majesty's vessels' see para 6 note 3 ante.

4 Naval Discipline Act 1957 s 132(3).

5 For the meaning of 'officer' see para 152 ante.

6 For the meaning of 'rating' see para 156 note 1 ante.

7 Naval Discipline Act 1957 s 120(1). The appropriate service authorities are empowered to make regulations prescribing the circumstances in which naval personnel are to be treated as attached temporarily to any of the military or air forces: see s 120(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See the Naval, Military and Air Forces (Attachment) Regulations 1964 (reproduced in the Manual of Naval Law vol III App VII). A person does not cease to be subject to naval discipline by reason of being attached to any forces under the Naval Discipline Act 1957 s 120 (as amended): s 120(4). As to attachment to the forces of a Commonwealth country or other countries see para 11 ante.

8 As to the meaning of 'enemy' see para 305 note 1 post.

9 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

10 Naval Discipline Act 1957 s 134(1) (amended by the Armed Forces Act 1971 s 74). When Her Majesty's naval forces are on active service, civilians employed with or accompanying those forces are subject to the Naval Discipline Act 1957: see s 118(1); and para 311 post.

11 See *ibid* s 134(8).

12 *Ibid* s 134(2) (s 134(2)-(9) added by the Armed Forces Act 1971 s 74). A declaration was made under this provision during the Falkland Islands conflict in May 1982. Active service was declared on 15 May 1982 and ceased on 3 August 1982. The effect of the declaration was to make all merchant seamen and other civilians serving with the task force subject to the Naval Discipline Act 1957. Active service was previously last declared during the Indonesian confrontation in 1963. A declaration under the Naval Discipline Act 1957 s 134 (as amended) affects not only members of the force but also other persons the application to whom of any other

provisions relating to naval discipline depends on whether that force is on active service: s 134(7) (as so added). Such a declaration comes into operation on being published in local orders: s 134(9) (as so added).

13 See *ibid* s 134(3) (as added: see note 12 *supra*). If there is no necessity for the force to continue to be treated as on active service the appropriate authority may declare accordingly: see s 134(4) (as added: see note 12 *supra*).

14 See *ibid* s 134(5) (as added: see note 12 *supra*). Where consent has not been obtained, the making of the order must be reported to the Secretary of State with all practicable speed: s 134(5) (as so added). As to the Secretary of State see para 2 *ante*.

15 *Ibid* s 134(6) (as added: see note 12 *supra*). Any direction under s 134(6) (as added) is without prejudice to anything already done by virtue of the original declaration: s 134(6) (as so added).

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/159. Forfeiture of service for desertion.

159. Forfeiture of service for desertion.

Where a rating of Her Majesty's naval forces¹ other than a reserve force is convicted of desertion², the period of his service in respect to which he is convicted of having been a deserter is to be forfeited³. Where any of a rating's service is so forfeited, any provision governing his terms of service other than one relating to discharge by purchase is to apply to him, and he is liable to serve, in like manner as if the appropriate date⁴ were the date of his entry or, as the case may be, attestation and he had on the appropriate date been duly entered or enlisted to serve for the like term⁵ as that for which he was in fact serving at the date of his conviction⁶.

The Defence Council⁷ may by regulations make provision for the restoration in whole or in part of any forfeited service to a rating in consideration of good service or on other grounds justifying the restoration of service forfeited⁸.

1 For the meaning of 'rating' see para 156 note 1 ante. For the meaning of 'Her Majesty's naval forces' see para 7 ante.

2 As to desertion see the Naval Discipline Act 1957 s 15 (as substituted) (see para 404 post); and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 40 para 4001.

3 Naval Discipline Act 1957 s 129D(1) (s 129D added by the Armed Forces Act 1971 s 65). Nothing in the Naval Discipline Act 1957 is to apply to a person who deserts at a time when he is, under regulations made in pursuance of the Armed Forces Act 1966 s 2 (as amended), or under any enactment repealed by any such regulations, continued in service after 22 years' service: Naval Discipline Act 1957 s 129D(5) (as so added).

4 'The appropriate date' means in relation to any person a date earlier than the date of his conviction for desertion by the length of his service which is not forfeited: *ibid* s 129D(3) (as added: see note 3 *supra*).

5 *Ie* both as respects duration and as respects liability to serve in Her Majesty's naval forces and any liability to serve in any reserve: *ibid* s 129D(2) (as added: see note 3 *supra*).

6 *Ibid* s 129D(2) (as added: see note 3 *supra*). However, if at the date of his conviction the rating was serving a term ending with the expiration of the period beginning with the date of his attaining the age of 18 and he had attained that age when he was convicted (whether or not he had attained it when the offence was committed), the duration of the term for which he is liable to serve is to be equal to that period, and the time for which he is required to serve in Her Majesty's naval forces is to be reduced accordingly: s 129D(2) proviso (as added: see note 3 *supra*).

7 As to the Defence Council see para 2 ante.

8 Naval Discipline Act 1957 s 129D(4) (as added: see note 3 *supra*). Any service restored to a rating under s 129D(4) (as added) is to be credited to him for the purpose of determining for the purposes of any provision governing his terms of service the amount of service in Her Majesty's naval forces or in any reserve which he had served or is liable to serve: s 129D(4) (as so added).

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed

Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/160. Impressment of persons.

160. Impressment of persons.

The power of impressment has been in abeyance¹ for a long time and this paragraph is retained for historical interest only.

The practice of compelling persons by force into the naval service of the realm² was called 'impressment'³. The power to impress was part of the prerogative of the Crown and justifiable only on the grounds of public necessity⁴. It was supported by the continued usage of centuries⁵, by express judicial opinions⁶ and by the implied sanction of numerous statutes and repeated decisions⁷.

The power of impressment extended at common law over all persons of a seafaring character, whether employed on the sea or on navigable rivers⁸, save only salt-water ferrymen who were exempted⁹. Statutory exemptions were, however, frequent. Most of these were created in the interests of certain special trades¹⁰, and suspended in time of emergency¹¹, but are now almost wholly defunct.

Impressment was carried out under warrant from the Admiralty grounded on an order by the Sovereign in Council¹². The terms of the warrant had to be strictly adhered to, and any irregularity rendered an attempted seizure unlawful and resistance to it justifiable¹³. The method of obtaining release after an unlawful impressment was by means of the writ of habeas corpus¹⁴.

1 The Royal Commission on Manning of the Navy, in its Report of 1859 (C 1st series) p xi, declared it to be impracticable. The Crimean War was the first important war in which impressment was not employed.

2 The practice of impressment anciently extended to ships as well as to men: see the instances quoted in the judgment in *R v Broadfoot* (1743) 18 State Tr 1323; 1 Laird Clowes's History of the Royal Navy pp 19, 112, 114, 118, 146; Maitland's Constitutional History of England p 280. As to the prerogative right of the Crown to requisition ships in a national emergency see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 813. Compulsory service was not confined to the necessities of the defence of the realm: see Barrington's Observations on Statutes (3rd Edn) p 302 note (u), where is set out a writ of Henry VI for the taking of singing-boys.

3 'Impressment' originally connoted no idea of physical compulsion. Press money was given both to soldiers and to sailors on voluntary enlistment as the earnest of their contract to serve. It was the 'King's Shilling': see Maitland's Constitutional History of England p 461; 1 Hale PC 677-678; Barrington's Observations on Statutes (3rd Edn) p 299 et seq; and the Oxford English Dictionary, 'Impress'. Pepys seems to have considered the giving of press money essential to the validity of a forcible taking: see Pepys' Diary, 1666, 30 June, 1 July, 2 July; 1667, 27 February, 22 August.

4 1 Bl Com (14th Edn) 419; Fost 154; Broom's Constitutional Law (2nd Edn) p 112-113.

5 See the instances quoted in *R v Broadfoot* (1743) 18 State Tr 1323; and 1 Laird Clowes's History of the Royal Navy pp 19, 112, 114, 118, 146. See also Maitland's Constitutional History of England p 280; 2 Stubbs's Constitutional History of England, its Origin and Development p 288; 2 May's Constitutional History p 137. As to the royal prerogative see para 1 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq.

6 *R v Broadfoot* (1743) 18 State Tr 1323; *R v Tubbs* (1776) 2 Cowp 512.

7 The legality of impressment is necessarily implied in all cases and statutes quoted in notes 8-11 infra. See also *R v Phillips* (1778) 2 Cowp 830; *Goldswain's Case* (1778) 2 Wm Bl 1207; *Napier v Browning* (1781) 16 Mor Dict 6610; *Chalmers v Napier* (1782) 16 Mor Dict 6612; *Ex p Drydon* (1793) 5 Term Rep 417; *Ex p Gallile* (1798)

7 Term Rep 673; *Ex p Brocke* (1805) 6 East 238; *Flewster v Royle* (1808) 1 Camp 187; *Chalacombe's Case* (1811) 13 East 550n; *Payne and Thoroughgood's Case* (1813) 1 M & S 223.

8 1 East PC 307; *R v Broadfoot* (1743) 18 State Tr 1323; *R v Tubbs* (1776) 2 Cowp 512 at 519; *Ex p Softly* (1801) 1 East 466. This seafaring character attached to a ship's carpenter (*Ex p Boggin* (1811) 13 East 549), but not to mere shipwrights (*Syme v Napier* (1780) 16 Mor Dict 6607). It was effaceable by a bona fide retirement from the sea (*Nash v Wyllie* (1810) 15 Fac Coll 568), but not by the sole act of being bound apprentice to a trade on land (*Turnbull v Home* (1793) 16 Mor Dict 6612). It did not attach to gentlemen yachtsmen: *R v Tubbs* supra.

9 *Ipswich Inhabitants v Browne* (1581) Sav 11, 14, Ex Ch. Cf *Ex p Fox* (1793) 5 Term Rep 276 at 277, where Buller J speaks of ferrymen generally as exempt; and see 1 Bl Com (14th Edn) 420. There was no exemption attaching to the Lord Mayor's Watermen (*R v Tubbs* (1776) 2 Cowp 512), to freemen or liverymen (*R v Young* (1808) 9 East 466), to freeholders (*R v Douglas* (1804) 5 East 477), or to a person serving as headborough (*Ex p Fox* supra).

10 Eg the Greenland trade was privileged by 1 Anne c 10 (1702), and subsequent Acts (all repealed); the fishing industry by 5 Eliz 1 c 5 (1562-3) (repealed), the Fish Carriage Act 1762 (repealed), and the Sea Fisheries (Scotland) Act 1810 (repealed); the sugar trade by 19 Geo 2 c 30 (1745-6) (repealed); insurance offices' watermen by the Fires Prevention (Metropolis) Act 1774 s 82 (repealed); and the coal trade by 6 & 7 Will & Mar c 18 (1694) s 19 (repealed).

11 19 Geo 3 c 75 (Navy) (1778-9); 38 Geo 3 c 46 (Manning of the Navy) (1797-8) (both repealed).

12 Prendergast's Navy Law (1852 Edn) 90 et seq. Since the office of Lord High Admiral was put into commission, no power of impressment has been inserted in the patents of the board. See the forms of warrants in *R v Broadfoot* (1743) 18 State Tr 1323; *Ex p Softly* (1801) 1 East 466; Prendergast's Navy Law (1852 Edn) p 121; and see facsimiles of passes against impressment (2 Laird Clowes's History of the Royal Navy pp 236-237).

13 *R v Broadfoot* (1743) 18 State Tr 1323; *R v Webb* (1747) 1 Wm Bl 19; *R v Borthwick* (1779) 1 Doug KB 207. As to the use of force in the execution of, or in resistance to, a warrant see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 926.

14 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 207 et seq.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/(i) Command, Entry into and Service in the Royal Navy/161. Application of the Rehabilitation of Offenders Act 1974.

161. Application of the Rehabilitation of Offenders Act 1974.

The Rehabilitation of Offenders Act 1974¹, the broad aim of which is to rehabilitate offenders who have not been reconvicted of any serious offence for periods of years and to penalise the unauthorised disclosure of their previous convictions², has a bearing on many areas of personnel management in the naval forces³. These include recruitment, commissioning, postings to particular areas or appointments, promotions, and extensions of service or re-engagement, amongst others. Appropriate action has therefore been taken to bring the provisions of that Act to the notice of those likely to be concerned with them in the course of their duties, so as to secure compliance with the requirements of the Act. It has been deemed necessary to maintain official records of convictions of service personnel which have become spent⁴, and for officials to have custody of such records and access to them in the course of their duties. Convictions which have become spent must be disclosed to a Crown employee in certain circumstances on the grounds of safeguarding national security⁵. Spent convictions may be used as a proper ground for dismissing or excluding a person from employment, or for prejudicing him in any way in his occupation or employment, if such action is taken for the purpose of safeguarding national security⁶. These exceptions are particularly relevant to the naval forces.

1 As to the application of the Rehabilitation of Offenders Act 1974 to evidence in service disciplinary proceedings and as to the conduct of such proceedings (especially as to sentencing) see para 388 post.

2 As to the provisions of the Rehabilitation of Offenders Act 1974 see generally SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.

3 ie including the reserve force. There are no general regulations in force in the navy which govern the application of the Rehabilitation of Offenders Act 1974 to naval personnel administration although the provisions of the Act are applied as necessary.

4 Such records are maintained because they are, or may be, required to enable proper mention of them to be made in criminal or service disciplinary proceedings, or on appeal therefrom (see *ibid* s 7(2)(a), (b); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1512), or where national security (or in Northern Ireland, the protection of public safety or order) is involved (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 478 et seq).

5 See the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 704.

6 See *ibid* art 4 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 704.

UPDATE

151-161 Command, Entry into and Service in the Royal Navy

Naval Discipline Act 1957 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act

2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/A. PAY AND PENSIONS/162. Regulation of naval and marine pay and pensions.

(ii) Pay, Pensions and Property

A. PAY AND PENSIONS

162. Regulation of naval and marine pay and pensions.

The pay, pensions¹, grants and other allowances² of officers, ratings, other ranks and nurses of the Royal Navy and Royal Marines, the pensions and other payments to widows, widowers and relatives of deceased officers and ratings, and the pay, bounty and allowances of naval reservists³ must be paid in such manner and subject to such restrictions⁴, conditions and provisions as are directed by Order in Council⁵. Such Orders in Council may not make any rule inconsistent with any provision affecting pay or pensions in the Naval Discipline Act 1957⁶. It is an offence for a person to receive or detain, or have in his possession, either without lawful authority or excuse or as a pledge or security or with a view to obtaining payment from the person entitled to it, any official document in connection with any payment in respect of any naval service⁷.

1 'Pension' includes naval pensions, Greenwich Hospital pensions, gratuities and allowances within the meaning of the Greenwich Hospital Acts 1865 to 1883 (as to which see para 165 post), and any sum due on account of such pension, gratuity or allowance: Naval Pensions Act 1884 s 2 (amended by the Theft Act 1968 s 33(3), Sch 3 Pt III; and the Armed Forces Act 1991 s 16(3)). As to war pensions, which are in general administered by the Secretary of State for Defence, see note 5 infra; and para 275 et seq post. As to the Secretary of State see para 2 ante.

2 Money distributable under the Naval Agency and Distribution Act 1864 is excepted: see the Naval and Marine Pay and Pensions Act 1865 s 8; and para 168 post.

3 As to naval reservists see para 173 et seq post.

4 'Restrictions' include deductions of pay in respect of liabilities for maintenance: see the Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1 (amended by the Naval Discipline Act 1957 s 137(1), Sch 6; the Armed Forces Act 1971 ss 61(2), 77(1), Sch 4 Pt II; the Armed Forces Act 1991 ss 15, 26, Sch 3; the Child Support, Pensions and Social Security Act 2000 s 85, Sch 9 Pt I; the Child Support Act 1991 (Consequential Amendments) Order 1993, SI 1993/785, art 4; and the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, art 1(b)). As to these deductions see para 76 ante.

5 See the Naval and Marine Pay and Pensions Act 1865 s 3. The Orders in Council made under this provision are numerous and extensive and include an annual order entitled the Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Pensions) Order. This order sets out the current rates and conditions for awards of retired pay, pensions and grants. The current rates of pay are set out in the Annual Pay Award Letter published by the Director of Service Personnel Policy. As to the application of the social security legislation to persons serving in Her Majesty's naval forces see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 22. Certain pensions and payments are exempted from income tax: see INCOME TAXATION vol 23(2) (Reissue) paras 1226-1229. As to disclosure of information on pensions to members of the naval pensions scheme see the Occupational Pension Schemes (Disclosure of Information) Regulations 1996, SI 1996/1655 (as amended); the Occupational Pension Schemes (Managers) Regulations 1986, SI 1986/1718 (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 800.

The power to make Orders in Council relating to pensions or other benefits for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown is now exercisable under the Social Security (Miscellaneous Provisions) Act 1977 s 12(1). See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended); and para 273 et seq post.

6 Naval and Marine Pay and Pensions Act 1865 s 9.

7 See the Naval Discipline Act 1957 s 99 (as amended); and para 46 ante.

UPDATE

162 Regulation of naval and marine pay and pensions

TEXT AND NOTES--See now the Armed Forces Act 2006 s 333 which provides that Her Majesty may by warrant make provision with respect to pay, bounty and allowances for members of the regular or reserve forces. For the meaning of 'regular forces' see PARA 191; and for the meaning of 'reserve forces' see PARA 306-313. As to forfeiture of and deductions from pay, see ss 341, 342; and the Armed Forces (Forfeitures and Deductions) Regulations 2009, SI 2009/1109.

Provision is made for the establishment of pension and compensation schemes for the armed or reserve forces: see the Armed Forces (Pensions and Compensation) Act 2004; and PARA 266A.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--Naval Pensions Act 1884 s 2 further amended: Armed Forces Act 2006 Sch 16 para 4.

NOTE 2--Naval and Marine Pay and Pensions Act 1865 s 8 repealed: Armed Forces Act 2006 Sch 17.

NOTE 4--Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 repealed: Armed Forces Act 2006 Sch 17.

NOTE 5--Naval and Marine Pay and Pensions Act 1865 s 3 amended: see PARA 76.

TEXT AND NOTE 6--Naval and Marine Pay and Pensions Act 1865 s 9 amended: Armed Forces Act 2006 Sch 16 para 3.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/A. PAY AND PENSIONS/163. Retired pay of officers.

163. Retired pay of officers.

Retired pay and gratuities for service and for disability attributable to the conditions of service are payable to officers at rates and subject to conditions laid down from time to time by Order in Council¹. The retired pay or terminal grant of an officer may be forfeited where he or she is convicted of treason or of an offence against the Official Secrets Acts which attracts a sentence of at least 10 years imprisonment. Retired pay or terminal grant may also be forfeited where an officer is convicted of an offence committed in connection with his or her service which the Secretary of State considers to have been gravely injurious to the defence, security or other interests of the state². Any retired pay or pension forfeited may in general be restored in whole or part³. Where retired pay has been forfeited, a compassionate allowance may be paid to, or for the benefit of, the spouse or other dependants of the officer. The amount of this allowance may not exceed the amount of the widow(er)'s pension which would have been awarded to the officer if he or she had died on the date that his or her retired pay was forfeited⁴. Officers⁵ of the Royal Navy and Royal Marines may in certain circumstances commute to a capital sum part of their retired pay or pensions but not disability retired pay or good service, naval and Greenwich Hospital or naval compassionate pensions⁶.

1 There are numerous and extensive Orders in Council relating to rates and conditions of retired pay; these orders are not statutory instruments and are not recorded in this work. An annual order is published entitled the Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Pensions) Order which sets out at length the current rates and conditions of award of retired pay and grants.

2 On conviction of treason the forfeiture of pensions and allowances is obligatory: see the Forfeiture Act 1870 s 2 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1818. As to the Secretary of State see para 2 ante.

3 The Secretary of State has power to restore an Admiralty pension forfeited under the Forfeiture Act 1870: see the Criminal Justice Act 1948 s 70(2).

4 See the Admiralty Pensions Act 1921 s 2(2). This provision applies to certain other pensions, grants and allowances as it applies to Admiralty pensions: see s 2(3) (amended by the Statute Law (Repeals) Act 1989).

5 For these purposes, 'officer' means commissioned officer and warrant officer, or subordinate officer in Her Majesty's naval forces: Pensions Commutation Act 1871 s 2 (amended by the Armed Forces Act 1981 s 20(1), Sch 3 para 3).

6 See the Pensions Commutation Acts 1871-1984; and para 271 post.

UPDATE

163 Retired pay of officers

TEXT AND NOTE 4--Admiralty Pensions Act 1921 s 2(2) amended: Civil Partnership Act 2004 Sch 26 para 13.

NOTE 4--1921 Act s 2(3) repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/A. PAY AND PENSIONS/164. Long service pensions and gratuities for ratings, other ranks and naval nurses.

164. Long service pensions and gratuities for ratings, other ranks and naval nurses.

Pensions and gratuities for long service and disability are awarded at the discretion of the Secretary of State¹, in accordance with the restrictions, conditions and provisions set out in Orders in Council, to non-commissioned officers, warrant officers, chief petty officers, petty officers, ratings and other ranks of the Royal Navy and Royal Marines and naval nurses of the Queen Alexandra's Royal Naval Nursing Service². The minimum period of reckonable service for the award of a long service pension is 22 years. 'Reckonable service' means service after attaining the age of 18 but does not include time served in prison or in detention or time spent in desertion. Provision is made for the awarding of service invaliding pensions for ratings who have completed the requisite number of years' reckonable service³. The retired pay or terminal grant of a rating, other rank or nurse may be forfeited where he or she is convicted of treason or of an offence against the Official Secrets Acts which attracts a sentence of at least 10 years imprisonment⁴. Retired pay or terminal grant may also be forfeited where a rating, other rank or nurse is convicted of an offence committed in connection with his or her service which the Secretary of State considers to have been gravely injurious to the defence, security or other interests of the state⁵. Where retired pay has been forfeited, a compassionate allowance may be paid to, or for the benefit of, the wife or other dependants of the rating, other rank or nurse. The amount of this allowance may not exceed the amount of the widow(er)'s pension which would have been awarded if the rating, other rank or nurse had died on the date that his retired pay was forfeited⁶. The Secretary of State may, on the application of a pensioner, and on such terms and subject to such conditions as are approved by the Treasury, commute any Admiralty pension payable to a rating, other rank or naval nurse⁷.

1 As to the Secretary of State see para 2 ante.

2 See the Naval and Marine Pay and Pensions Act 1865 s 3; and the Armed Forces Act 1981 s 20(1), Sch 3 Pt I. The rates and conditions for award of such pensions are published in the annual Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Pensions) Order. Disability pensions and gratuities in respect of disabilities directly attributable to war service are awarded at the discretion of the Secretary of State for Defence: see paras 163 ante, 275 et seq post.

3 See BR 1950 *Naval Pay Regulations* art 50.072.

4 See *ibid* art 50.108(a)(1); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 483 et seq.

5 See *ibid* art 50.108(a)(2).

6 See *ibid* art 50.109.

7 Admiralty Pensions Act 1921 s 1(1) (amended by virtue of the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

UPDATE

164 Long service pensions and gratuities for ratings, other ranks and naval nurses

NOTE 2--Naval and Marine Pay and Pensions Act 1865 s 3 amended: see PARA 76.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/A. PAY AND PENSIONS/165. Other pensions.

165. Other pensions.

Statutory provision still exists for extra pensions¹ to be paid in certain circumstances. Greenwich Hospital pensions may be awarded to officers of the Royal Navy and Royal Marines², special Greenwich Hospital pensions may be awarded to seamen and marines³, and pensions may be awarded to widows and gratuities to other dependent relatives of deceased men of the Royal Navy or Royal Marines or of any naval reserve force⁴. Naval compassionate pensions⁵ and Travers pensions⁶ may also be awarded to certain officers.

1 In addition to the pensions referred to in paras 162-164 ante.

2 Her Majesty may by Order in Council appoint pensions to officers and men of the Royal Navy and Royal Marines by virtue of the Greenwich Hospital Act 1865 s 5 (amended by the Armed Forces Act 1971 s 75, Sch 3 para 2; and the Statute Law (Repeals) Act 1976). Such pensions are called 'Greenwich Hospital pensions': Greenwich Hospital Act 1865 s 7.

3 The Greenwich Hospital Act 1869 empowers the Secretary of State to make regulations approved by Order in Council under which special Greenwich Hospital pensions may be awarded to non-commissioned officers and men: see ss 5, 6 (s 5 amended by the Greenwich Hospital Act 1947 ss 1(1), 3(2), Sch 2). As to the Secretary of State see para 2 ante.

4 See the Greenwich Hospital Act 1883 s 2 (substituted by the Greenwich Hospital Act 1947 s 2(1), Sch 1). Such pensions, allowances and gratuities authorised by the Act must be granted in accordance with regulations made by the Secretary of State and approved by Order in Council.

5 The Naval Medical Compassionate Fund Act 1915 empowers the making of Orders in Council regulating the Naval Medical Compassionate Fund. See the Naval Medical Compassionate Fund Order 1915, SR & O 1915/769 (amended by SR & O 1919/884; SI 1967/1484; SI 1988/1294; SI 1991/994; SI 1996/3213), which provides for pensions to be awarded to retired permanent regular officers of the Royal Navy or Royal Marines.

6 See the Armed Forces Act 1976 s 21(1), (5). These provisions empower the Secretary of State to grant pensions, called 'Travers pensions', to certain retired lieutenants or commanders under such conditions as are directed by Order in Council from the income of the Travers Foundation property.

UPDATE

165 Other pensions

NOTE 2--Greenwich Hospital Act 1865 s 5 further amended: Civil Partnership Act 2004 Sch 26 para 1.

NOTE 4--Greenwich Hospital Act 1883 s 2 amended: 2004 Act Sch 26 paras 4, 16.

NOTE 5--Naval Medical Compassionate Fund Act 1915 amended: 2004 Act Sch 26 para 8. SR & O 1915/769 replaced: Naval Medical Compassionate Fund Order 2008, SI 2008/3129.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/A. PAY AND PENSIONS/166. Assignment of pay and pensions.

166. Assignment of pay and pensions.

Any assignment, sale or contract made by an officer, seaman or marine entitled to any naval pension, or by a person entitled to a pension as a widow of an officer, or by a person entitled to a compassionate allowance, of or in relation to that pension or allowance, is void¹. There is a similar prohibition with regard to the pay, wages or allowances of subordinate officers, seamen, marines and naval reserves². However, in the case of divorce a court may make orders in respect of naval pensions, terminal grants and death-in-service gratuities³. The salary of naval officers is not assignable⁴.

1 Naval Discipline Act 1957 s 128G(1) (added by the Armed Forces Act 1991 s 16(1)). See also *Cotgrave v Cotgrave* [1991] 4 All ER 537, CA; *Legrove v Legrove* [1995] 1 FCR 102, CA. As to the assignment of pensions generally see CHOSER IN ACTION vol 13 (2009) PARAS 94, 96.

2 As to the reservists to whom this provision applies see para 162 ante.

3 Pensions Act 1995 ss 166(4), (5) (s 166(4) amended by the Welfare Reform and Pensions Act 1999 s 84(1), Sch 12 Pt I paras 43, 62(1), (2)). The restrictions in the Naval Discipline Act 1957 s 128G(1), (2) (as added) are disapplied when pension-sharing rights are activated under certain types of order: see further SOCIAL SECURITY AND PENSIONS.

4 See *Apthorpe v Apthorpe* (1887) 12 PD 192, CA; and CHOSER IN ACTION vol 13 (2009) PARA 95.

UPDATE

166 Assignment of pay and pensions

TEXT AND NOTES 1, 2--Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. See now the Armed Forces Act 2006 s 356.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/A. PAY AND PENSIONS/167. Pay, half-pay and pension of a bankrupt officer, rating, other rank or nurse.

167. Pay, half-pay and pension of a bankrupt officer, rating, other rank or nurse.

When an officer, rating, other rank or nurse is a bankrupt, so much of his pay as the court, with the consent of the chief officer of the department dealing with it, may direct, is available for distribution among his creditors¹. With regard to any half-pay or pension, the court may order it or part of it to be paid to the trustee and applied by him as the court may direct.

¹ See the Insolvency Act 1986 s 310 (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) para 449 et seq. Any officer or rating who has a receiving order in bankruptcy made against him or who files a petition in bankruptcy must report the fact at once to his commanding officer: see Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 36 para 3617.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/B. PRIZE MONEY AND SALVAGE SERVICES/168. Prize money.

B. PRIZE MONEY AND SALVAGE SERVICES

168. Prize money.

A money award, called 'prize money'¹, may be made to officers and crew² for their services:

- 41 (1) in the salvage of any ship or cargo³;
- 42 (2) as prize salvage for the recapture of any British ship or aircraft or goods taken by the enemy in war⁴;
- 43 (3) in any seizure for breach of any law relating to customs and excise⁵ or under any Act relating to piracy⁶;
- 44 (4) in any seizure for breach of the law relating to foreign enlistment⁷; or
- 45 (5) for any other special service in respect of which any reward is payable⁸.

This reward is also payable to commissioned officers in respect of the seizure of a ship subject to forfeiture⁹ for breach of the law relating to merchant shipping¹⁰.

All awards are distributable solely by the Armed Forces Personnel Administration Agency according to the Orders in Council relating to such awards or as the Secretary of State for Defence may direct¹¹. Before the distribution, the costs and expenses of officers and crew and ship's agent, and any other charges, must be taxed and paid¹². Money awaiting distribution may be invested, under the direction of the Secretary of State, in proper securities¹³. The High Court has exclusive jurisdiction in any issue concerning the distribution or investment of such money, and its decision is binding on all persons concerned¹⁴. The share must be paid to the persons entitled, but no assignment of a money award may be made in respect of any advance or consideration¹⁵. A share not claimed, or to which a claim has not been proved to the satisfaction of the Ministry of Defence, will be deemed to be forfeited six years after the first day of April following the date when the award first became distributable¹⁶.

1 See the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4601(1). As to prize generally see PRIZE.

2 'Officers and crew' includes flag officers, commanders and other officers, engineers, seamen, marines, soldiers, airmen and others on board any of Her Majesty's ships of war: see the Naval Agency and Distribution Act 1864 s 2; and the Naval Prize Act 1864 s 2 (amended by the Prize Act 1939 s 1(2), Schedule Pt I).

3 See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 115; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4641 et seq. See also para 170 post. As to salvage generally see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 113 et seq; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 883 et seq.

4 See the Naval Prize Act 1864 s 40 (amended by the Prize Act 1939 Schedule Pt I). As to prize salvage see PRIZE vol 36(2) Reissue para 842 et seq.

5 See the Customs and Excise Management Act 1979 s 165; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 1169.

6 See the Piracy Act 1850 s 5 (amended by the Statute Law Revision Act 1875; and the Statute Law Revision Act 1891); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 139. As to piracy generally see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 155 et seq; and see also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 72 para 7205.

7 See the Foreign Enlistment Act 1870; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 138. As to the Foreign Enlistment Act 1870 generally see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) paras 414-415. See also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 72 para 7215.

8 See the Naval Agency and Distribution Act 1864 s 12 (amended by the Statute Law (Repeals) Act 1998).

9 The forfeiture under the Merchant Shipping Act 1995 Pt I (ss 1-7); see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 235.

10 See *ibid* s 7; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 235.

11 See the Naval Agency and Distribution Act 1864 ss 14, 15 (s 14 amended by the Statute Law Revision Act 1893); and the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6). As to the Secretary of State see para 2 ante. The scale of distribution of salvage awards is regulated by the Salvage Awards, Scale of Distribution, Order in Council 1936, SR & O 1936/1385; and that of prize money, other than salvage awards, by the Prize Money etc Order in Council 1918, SR & O 1918/539 (amended by SR & O 1936/1385).

12 Naval Agency and Distribution Act 1864 s 13; Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4648.

13 See the Naval Agency and Distribution Act 1864 s 21 (amended by the Statute Law Revision Act 1893); and the Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6).

14 Naval Agency and Distribution Act 1864 s 22 (amended by the Statute Law Revision Act 1893); Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6). The reference in this provision to the High Court of Admiralty must be construed as a reference to the High Court of Justice, Queen's Bench Division, Admiralty Court: see the Supreme Court Act 1981 s 27, Sch 4 para 1. See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 85 et seq.

15 See the Naval Agency and Distribution Act 1864 s 15; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4608(4).

16 See *ibid* Ch 46 para 4608(6). As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

UPDATE

168-170 Prize money ... Salvage services by and to Her Majesty's ships

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

168 Prize money

NOTE 14--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/B. PRIZE MONEY AND SALVAGE SERVICES/169. Ship's agent.

169. Ship's agent.

An agent must be appointed for each ship of war¹ in commission², whose duty it is, in the name of the ship, or of the officers and crew or any of them, to take any necessary steps or proceedings in cases where prize money may be payable³. Those prepared to be ship's agents are named in the Navy List. Those not included in the Navy List are not debarred from appointment if they are qualified under the Naval Agency and Distribution Act 1864⁴. The post of agent may be held by a partnership body⁵, but it may not be held by anyone holding office or employment under the Crown or by a solicitor⁶. The appointment must be made by attested instrument in a prescribed form signed by the commanding officer⁷. A record of the appointment is to be kept in the Ship's Navigational Data Book⁸ and the instrument must be registered with the Secretary of State and filed in the Admiralty Registry of the High Court⁹. An official copy of the instrument under the seal of the court is conclusive evidence of it¹⁰. The appointment is not affected by a change of commanding officers¹¹, and makes the holder an officer under the jurisdiction of the High Court¹². The agent must have a place of business in central London¹³. He is entitled to copies of official accounts¹⁴ and is remunerated by commission at the rate of 2½ per cent on the net amount distributable¹⁵. The rights of the officers and crew to take any steps as salvors, seizers, captors or otherwise, in the absence or default of the agent, is not affected, and the right and authority of the Crown are also preserved¹⁶.

1 The Naval Agency and Distribution Act 1864 may be applied, by direction of the Secretary of State, to any ship, vessel, or hovercraft, other than a ship of war, belonging to the Crown and in actual service: see s 3 (amended by the Statute Law Revision Act 1893); Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6); Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 4, Sch 1. As to the Secretary of State see para 2 ante.

2 See the Naval Agency and Distribution Act 1864 s 4; and see also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4602.

3 See the Naval Agency and Distribution Act 1864 s 12 (amended by the Statute Law (Repeals) Act 1998). For the circumstances in which prize money may be payable see para 168 ante.

4 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4602.2.

5 See the Naval Agency and Distribution Act 1864 s 8 (amended by the Armed Forces Act 1981 s 24(2)). The names of the partners must be registered with the Secretary of State: Naval Agency and Distribution Act 1864 s 8 (as so amended).

6 Ibid s 7 (amended by the Courts and Legal Services Act 1990 s 125(2), (7), Sch 17 para 1, Sch 20); Solicitors Act 1974 s 89(6).

7 Naval Agency and Distribution Act 1864 s 5. For the prescribed form see s 5, Schedule. See also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4602.2.

8 Ibid Ch 46 para 4602.2.

9 Naval Agency and Distribution Act 1864 s 6 (amended by the Armed Forces Act 1981 s 24(2)).

10 Naval Agency and Distribution Act 1864 s 6 (as amended: see note 9 supra).

11 Ibid s 9.

12 See ibid s 11.

13 Ibid s 10. The Act provides that the agent must have a place of business within five miles of the General Post Office, London. The building formerly known as the General Post Office is situated in St Martins-le-Grand, London EC1.

14 See ibid s 18.

15 See ibid s 19 (amended by the Statute Law Revision Act 1893). There may be an apportionment where more than one ship is involved or there is a change of agent: see the Naval Agency and Distribution Act 1864 s 20.

16 Ibid s 23(2), (3).

UPDATE

168-170 Prize money ... Salvage services by and to Her Majesty's ships

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/B. PRIZE MONEY AND SALVAGE SERVICES/170. Salvage services by and to Her Majesty's ships.

170. Salvage services by and to Her Majesty's ships.

Officers and men of the Royal Navy, although bound as public servants to perform active services for the protection of British ships, their cargo and the lives of those on board¹, may be required to perform such services which are not within the ordinary scope of their duties. In such cases they are entitled to salvage reward for their personal services², subject to the consent of the Ministry of Defence³.

Salvage services are voluntary services which save, or help to save a ship, an aircraft, its apparel, cargo or bunkers and stores when in danger, either at sea or in tidal waters or on the shores. The danger does not necessarily have to be imminent: it suffices if, at the time the services are rendered, the ship or aircraft has encountered any danger or misfortune which might expose it to injury or destruction were the services not rendered⁴.

No claim for salvage services by the commander or crew of any of Her Majesty's ships may be finally adjudicated upon without the consent of the Secretary of State⁵, and, if a claim is prosecuted without this consent, the claim stands dismissed with costs⁶. It is the duty of the ship's agent to take all necessary action to secure for the officers and crew reward for salvage services⁷. Officers and men may not accept salvage remuneration, whether the award results from the decision of a court or arbitrator, or from settlement out of court or from the voluntary gift of the owners, without the consent of the Ministry of Defence⁸. Any such remuneration is distributable and paid in the manner in which the Secretary of State directs⁹.

Where salvage services are rendered by or on behalf of Her Majesty, whether in right of her United Kingdom government or otherwise, Her Majesty is entitled to claim salvage in respect of those services to the same extent as any other salvor, and has the same rights and remedies in respect of those services as any other salvor¹⁰.

Where salvage services are rendered by the commanding officer or crew of one of Her Majesty's ships outside the limits of the United Kingdom territorial seas, the commanding officer may detain the officer, cargo or property alleged to be saved, if justified by the circumstances of the case, for the purposes of determining the value of the salvaged property and for securing a bond for the services rendered¹¹.

Claims may be brought in respect of salvage services to Her Majesty's ships and aircraft¹².

1 'It is, I apprehend, notorious that it forms part of the instructions of every one of Her Majesty's vessels that they shall render assistance to British vessels in distress': see *The Charlotte Wylie* (1846) 2 Wm Rob 495 at 497 per Dr Lushington. See also Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46, which makes provision in connection with, inter alia, the salvage of Her Majesty's ships and vessels and private ships. The quelling of a mutiny on board a merchant vessel has been held to be within the scope of the duty: *The Francis and Eliza* (1816) 2 Dods 115.

2 See para 168 ante; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 118. The claim by the officers and crew is limited to their personal services, and they may not claim salvage award for anything that fairly falls within their public duty to perform services for the protection of British ships, their cargo and the lives of those on board: see *The Ulysses (Cargo Ex)* (1888) 13 PD 205. The fact that they do not risk their own property is taken into account (*The Iodine* (1844) 3 Notes of Cases 140), but the court is entitled to take into consideration the responsibility incurred by the officer who takes it upon himself to risk government property (see *The Gorliz* (1917) 119 LT 123) and the fact that a commanding officer of one of Her Majesty's ships runs the risk of incurring official displeasure by endangering his ship (see *The Domira* (1914) 30 TLR 521, CA). Where more than one of Her Majesty's ships is engaged, the service must be regarded as a whole without drawing too nice a distinction between the work of one ship and another, but the contribution of any crew rewarded must be

substantial: *The Athamas* (1917) 119 LT 117. As to salvage generally see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 Annex 46B.

3 Merchant Shipping Act 1995 s 230(3). The officers of Her Majesty's ships appear to have the same rights to salvage for their personal services as the members and crew of a merchant ship: see *The Woosung (Cargo Ex)* (1876) 1 PD 260, CA. See also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4643. Leave to claim salvage in respect of goods covers services to passengers: *The Alma* (1861) Lush 378. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

4 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para J4621.

5 Merchant Shipping Act 1995 s 230(3). As to the Secretary of State see para 2 ante.

6 Ibid s 230(5). Any document purporting to give the consent of the Secretary of State for the purposes of s 230(3) and to be signed by an officer of the Ministry of Defence is evidence of that consent: s 230(4).

7 See the Naval Agency and Distribution Act 1864 s 12 (amended by the Statute Law (Repeals) Act 1998). As to ship's agents see para 169 ante.

8 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4648(1).

9 Naval Agency and Distribution Act 1964 s 14 (amended by the Statute Law Revision Act 1893); Defence (Transfer of Functions) Act 1964 ss 1(1)(a), (2), 3(2), (6)). See the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4608. The distribution of salvage awards is regulated by the Salvage Awards, Scale of Distribution, Order in Council 1936, SR & O 1936/1385. The scale of distribution is a sliding one according to rank. As to the payment of shares see the Naval Agency and Distribution Act 1864 s 15; and the Distribution of Prize Money etc Order in Council 1917, SR & O 1917/212 (amended by SR & O 1926/1421; SI 1973/232).

10 Merchant Shipping Act 1995 s 230(2). See SHIPPING AND MARITIME LAW vol 93 (2008) PARA 118. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

11 See the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 paras 4646-4647. As to the United Kingdom territorial seas see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 123 et seq; WATER AND WATERWAYS vol 100 (2009) PARA 31.

12 As to such claims see the Merchant Shipping Act 1995 s 230(1); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 118. See also the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 46 para 4631.

UPDATE

168-170 Prize money ... Salvage services by and to Her Majesty's ships

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/C. PROPERTY OF DECEASED/171. Disposal of effects.

C. PROPERTY OF DECEASED

171. Disposal of effects.

Immediately following the death of naval personnel, the commanding officer is to ensure that all the clothes and other effects of the deceased are collected by a responsible person¹. No action is required in respect of personal effects belonging to the deceased which are not on Ministry of Defence property, or are in an occupied married quarter or official residence, as these are regarded as being in the custody of the widow(er) or occupier².

Service effects, such as official documents, flying clothing, naval stores etc, found with the deceased's effects should be taken on charge by the ship's supply officer³. If the deceased is an officer, none of his effects is to be sold by service auction. In the case of ratings or Royal Marine other ranks, everything except medals and such civilian articles as the commanding officer decides to treat as reserved effects to be preserved for the person entitled, are to be sold by auction as soon after death as convenient⁴.

None of the effects of a deceased officer, or the reserved effects of a deceased naval rating or Royal Marine is to handed over or sent to any person until specific authority for such action is received from the Ministry of Defence⁵.

Certain sums of money, called the residue, standing to the credit of a deceased officer, seaman or marine⁶ must be disposed of in accordance with statutory provision⁷, as must unsold effects⁸.

1 BR 8886 *RN Casualty Procedures* art 1511.

2 Ibid art 1511.2. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

3 Ibid art 1512.4.

4 Ibid art 1513.

5 Ibid art 1521.

6 See the Navy and Marines (Property of Deceased) Act 1865 s 2 (amended by the Statute Law Revision Act 1893; the Armed Forces Act 1971 ss 75, 77(1), Sch 3 para 3, Sch 4 Pt II; and the Statute Law Revision Act 1966).

7 See the Navy and Marines (Property of Deceased) Act 1865 s 3. These provisions also apply to civilians employed in naval dockyards or other establishments: see s 4. Where the residue exceeds £5,000, the Secretary of State may pay it to the deceased's representative: s 5 (amended by virtue of the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539). Where the residue does not exceed £5,000, representation need not be taken out unless the Secretary of State so requires: Navy and Marines (Property of Deceased) Act 1865 s 6 (amended by virtue of the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539). The Secretary of State is not bound to pay the residue to a creditor of the deceased or to a nominee: see the Navy and Marines (Property of Deceased) Act 1865 ss 7, 8, 9 (s 8 amended by virtue of the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539). The residue must not be disposed of otherwise than by payment to the deceased's representative, for three months from notice of the death unless the Secretary of State thinks it is safe and proper to do so: see the Navy and Marines (Property of Deceased) Act 1865 s 10. Where representation is not taken out, debts of the deceased must be paid out of the residue: see s 11. As to the Secretary of State see para 2 ante.

8 See *ibid* s 13.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/(1) THE ROYAL NAVY/ (ii) Pay, Pensions and Property/C. PROPERTY OF DECEASED/172. Medals and decorations.

172. Medals and decorations.

Medals and decorations belonging to an officer, seaman or marine¹ dying on service are not comprised in his personal estate with reference to the claims of creditors or for any of the purposes of administration, but are to be held and disposed of in the prescribed manner². Subject to any specific directions in the statutes or warrants governing the various orders, decorations or medals, the decorations or medals of an individual dying on service are to be sent to the authority responsible for disposing of his estate³.

1 As to the meanings of 'officer', 'seaman' and 'marine' see para 171 note 6 ante.

2 Navy and Marines (Property of Deceased) Act 1865 s 14. Any medals bequeathed by will must be sent to the legatee; if not bequeathed by will, the medal must be sent to the person standing nearest in the following order of relationship: widow, eldest surviving son, eldest surviving daughter, father, mother, eldest surviving brother, eldest surviving sister, eldest surviving half-brother, eldest surviving half-sister, and if it cannot be disposed of in this way it may be sent to some other relative or interested party: Navy and Marines (Property of Deceased) Order 1956, SI 1956/1217, art 24.

3 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 74 para J7421.

UPDATE

172 Medals and decorations

NOTE 2--SI 1956/1217 art 24 amended: SI 2005/3184.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/173. The Naval Reserve Forces.

(2) NAVAL RESERVE FORCES

173. The Naval Reserve Forces.

The Secretary of State¹ is authorised to maintain the following reserve forces: (1) the Royal Naval Reserve; (2) the Royal Marines Reserve; and (3) the Royal Fleet Reserve².

The Royal Naval Reserve and the Royal Marines Reserve comprise volunteer reservists who accept an annual training commitment and a liability to call out for permanent service. The Royal Fleet Reserve comprises officers and men who have served in the Royal Navy and Royal Marines. A maximum number of members in each force is authorised each year by Parliament³. The Secretary of State is empowered to make regulations for entry into and governance of these reserves⁴.

Her Majesty may, by Order in Council, fix the rate of pay, bounty and allowances payable to members of the naval reserve forces⁵. Pensions and allowances may, for certain types of service, be granted to members of the reserve forces and, in the case of death attributable to naval service, to their spouses, children or other dependent relatives⁶.

Members of the reserve forces may undertake a number of different forms of service including: full-time reserve service⁷; additional duties commitments⁸; and training obligations and other duties⁹. Since 1997 there have also been two new categories of service. The first allows reservists to enter special agreements with the consent of their employers in order to take on an increased liability for call out and is known as the high readiness reserve¹⁰; the second enables employees of certain defence contractors to enter employee agreements and become special members of the reserve forces, known as the sponsored reserves¹¹.

1 As to the Secretary of State see para 2 ante.

2 Reserve Forces Act 1996 s 1(1), (2)(a). The Reserve Forces Act 1996 is now the principal statute governing the reserve forces, replacing most parts of the Reserve Forces Act 1980. The Reserve Forces Act 1996 came into force on 1 April 1997 (see the Reserve Forces Act 1996 (Commencement No 1) Order 1997, SI 1997/305, art 2(1)) and the new powers it introduced apply to those who join a reserve force on or after that date and, other than in so far as relating to liability for training and call out, to those reservists who were already members of a reserve force on that date: see the Reserve Forces Act 1996 ss 128, 129, Schs 8, 9; and para 224 post. As to the Royal Naval Reserve see para 174 post. As to the Royal Fleet Reserve see para 175 post. As to the Royal Marines Reserve see para 189 post.

3 See *ibid* s 3.

4 See *ibid* s 4.

5 See *ibid* s 7.

6 See *ibid* s 8.

7 See *ibid* s 24. See also BR 60 *Royal Naval Reserve Regulations* ch 8.

8 See the Reserve Forces Act 1996 s 25. See also BR 60 *Royal Naval Reserve Regulations* ch 9.

9 See the Reserve Forces Act 1996 ss 22, 27. See also BR 60 *Royal Naval Reserve Regulations* chs 3, 10.

10 See the Reserve Forces Act 1996 Pt IV (ss 28-37) (as amended); and para 245 post. See also BR 60 *Royal Naval Reserve Regulations* ch 6.

11 See the Reserve Forces Act 1996 Pt V (ss 38-49) (as amended); and para 251 post. See also BR 60 *Royal Naval Reserve Regulations* ch 7.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/174. The Royal Naval Reserve.

174. The Royal Naval Reserve.

The reserve forces consist of officers and men¹. A person entering as an officer must usually reside in the United Kingdom and must be a holder of British nationality, a Commonwealth citizen or a citizen of the Irish Republic². Officers of reserve to the Royal Navy are not required to serve for any fixed period³ and may be permitted to resign their commissions at the discretion of the Defence Council⁴. Officers may be discharged or required to resign at any period of their service for misconduct, inefficiency, unsuitability or physical unfitness⁵. Retirement is compulsory at a specified age or seniority dependent on rank⁶. Subject to certain requirements, officers may be placed on the retired list, in which case they remain liable to be called out for actual service⁷. A British merchant ship or fishing vessel commanded by an officer on the active or retired list of the Royal Naval Reserve may, subject to certain conditions, and with the authority of a special warrant, wear the plain blue ensign⁸. All members of the Royal Naval Reserve are subject to the provisions of the Naval Discipline Act 1957⁹.

1 See the Reserve Forces Act 1996 s 2(1). The regulations relating to officers of the Royal Naval Reserve are set out in the *Royal Naval Reserve Administrative Instructions 2000*; and BR 60 *Royal Naval Reserve Regulations*.

2 See the *Royal Naval Reserve Administrative Instructions 2000* art 0108; and BR 60 *Royal Naval Reserve Regulations* art R0108.5. As to British nationality see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM. As to the Commonwealth see COMMONWEALTH.

3 See the *Royal Naval Reserve Administrative Instructions 2000* art 0209.

4 See *ibid* art 0211. As to the Defence Council see para 2 ante.

5 See *ibid* art 0212.

6 See *ibid* art 0209.

7 See *ibid* art 0210. As to the liability of officers in the Royal Naval Reserve to be called out see para 179 post.

8 See the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 91 para 9153. As to the use of white, blue and red ensigns see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 45.

9 See the *Royal Naval Reserve Administrative Instructions 2000* art 0402(1).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/175. The Royal Fleet Reserve.

175. The Royal Fleet Reserve.

The Royal Fleet Reserve ('RFR') comprises: all officers of the Royal Navy and Royal Marines who, on leaving the regular service, have transferred to the emergency and retired lists; officers on the retired lists of the Royal Naval Reserve and the Royal Marines Reserve; and all Royal Navy and Royal Marines ratings and other ranks who, on leaving the service, are not in receipt of a service pension. Officers join the RFR as RFR (Commissioned) ('RFR(C)'), and ratings and other ranks as RFR (Non-Commissioned) ('RFR(NC)'). The RFR exists in peacetime principally to provide a reserve force which may be made available for war but which may, in certain circumstances, also provide ex-regular reservists to supplement peacetime or crisis manning¹.

The RFR(C) consists of officers on the Royal Navy and Royal Marines retired list² and emergency list³ and the retired lists of the Royal Naval Reserve and Royal Marines Reserve⁴. The RFR(NC) consists of Royal Navy ratings and Royal Marines other ranks who have left regular service without completing 22 years' reckonable service⁵.

Members of the RFR(NC) are subject to annual postal reporting throughout the period of their reserve liability. They are required to provide the Registrar of Reserves with an update of their personal details pertinent to their availability for call out⁶.

Any member of the RFR with a call out liability who, as at 31 December 2000, had reported to the Registrar of Reserves his employment in a previously reserved occupation, is permitted to retain such status until either he leaves his current employment or his reserve liability ends, whichever is the sooner⁷.

1 The regulations relating to the RFR are BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve*, made under the Reserve Forces Act 1996 s 4 (see para 173 ante). The regulations are not statutory instruments. Prior to 1 April 1997 (ie the date the Reserve Forces Act 1996 came into force: see para 173 note 2 ante), the RFR consisted only of Royal Navy male ratings and Royal Marines other ranks. The Reserve Forces Act 1996 applies to those members joining the reserve forces on or after 1 April 1997. As to existing members at that date see para 173 note 2 ante.

2 See BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve* art 0202(2). Such officers have a continuous call out liability. Transitional members (see note 1 supra) are only liable to be called out under the Reserve Forces Act 1996 s 52 (call out for national danger, great emergency or attack on the United Kingdom: see para 232 post) or s 54 (call out for warlike operations: see para 232 post).

3 See BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve* art 0202(5). Such officers have a call out liability for four years.

4 See *ibid* art 0203. Officers completing their regular service in the Royal Naval Reserve or Royal Marines Reserve and who meet certain criteria, prescribed by the Director of Naval Reserves or Director of the Royal Marines Reserve, may be permitted to join the appropriate retired lists. Those who joined the RFR(C) on or after 1 April 1997 are liable for call out under the Reserve Forces Act 1996.

5 See BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve* art 0308. Those subject to the Reserve Forces Act 1996 will have a liability for recall for three years. However, when the sum of regular service from the age of 18 and reserve service would exceed 22 years, the liability is reduced so that the total combined service is 22 years.

6 See BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve* Ch 4.

7 See *ibid* art 0205.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/176. Special Class of the Royal Fleet Reserve.

176. Special Class of the Royal Fleet Reserve.

The special class of the Royal Fleet Reserve is a category of personnel liable for additional call out¹. Now of diminishing importance, it will remain in existence until all reservists in that class have completed their period of service. Members of the Royal Fleet Reserve (Non-Commissioned) are no longer eligible to join the special class².

¹ See the Reserve Forces Act 1980 ss 2(3), 57 (repealed as from a day to be appointed by the Reserve Forces Act 1996 s 131(2), Sch 11: see para 17 note 3 ante). The provisions for membership of the special class are contained in the Reserve Forces Act 1980 s 57 (prospectively repealed).

² See the Reserve Forces Act 1996 s 128, Sch 8 para 4. The Reserve Forces Act 1996 is now the principal Act governing the reserve forces, replacing the Reserve Forces Act 1980: see para 173 note 2 ante. It came into force on 1 April 1997 and applies to those who joined a reserve force on or after that date. Reservists are now ineligible to join the special class: see the Reserve Forces Act 1996 s 128, Sch 8 para 4(2). If they were in that class before 1 April 1997, they may continue as members until the end of their terms of service under the Reserve Forces Act 1980, unless they elect to be subject to the provisions of the Reserve Forces Act 1996: Sch 8 para 4(3)-(5).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/177. The Queen Alexandra's Royal Naval Nursing Service Reserve.

177. The Queen Alexandra's Royal Naval Nursing Service Reserve.

The Queen Alexandra's Royal Naval Nursing Service Reserve ('QARNNS(R)') is an integral part of the Royal Naval Reserve¹. QARNNS(R) officers, because of their status as commissioned officers, have the same reserve liability as other Royal Naval Reserve officers; however, QARNNS(R) ratings have no reserve liability when they leave the Royal Naval Reserve². Officers and ratings are subject to naval discipline as naval reserve forces³, while serving, called out, being trained or exercised and from the time of being ordered to report for duty until duly released or discharged⁴.

1 The regulations relating to QARNNS(R) are contained in the *Royal Naval Reserve Administrative Instructions 2000* Annex 2A.

2 See BR 64 *Regulations for the Naval and Marine Reserves* art 0208. As to call out liability see paras 179, 232 post.

3 See the Naval Discipline Act 1957 s 132(8) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 13(b)).

4 See the Naval Discipline Act 1957 s 111(3), (4) (as amended); and para 306 post.

UPDATE

177 The Queen Alexandra's Royal Naval Nursing Service Reserve

TEXT AND NOTES 3, 4--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/178. Wrongful enlistment.

178. Wrongful enlistment.

If a person offering himself to be entered for service in any of the naval reserve forces knowingly makes a false answer to a question put to him in connection with his entry into that service, he is guilty of an offence¹.

¹ Reserve Forces Act 1996 s 9, Sch 1 para 5(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 1 on the standard scale: Sch 1 para 5(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 40 note 4 ante.

UPDATE

178 Wrongful enlistment

TEXT AND NOTE 1--Reserve Forces Act 1996 Sch 1 para 5(1) amended, Sch 1 para 5(2) further amended: Armed Forces Act 2006 Sch 14 para 54.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/179. Call out for service and training.

179. Call out for service and training.

A reservist's liability to report for service on call out is triggered by the serving of a call out notice¹. Reservists whose military salary when called out or recalled for operations is less than their civilian pay may be eligible for financial assistance, and employers of reservists who are called out or recalled will be able to seek financial assistance if they suffer financial loss as a result². Should the reservist or an employer not be content with the decision of the adjudication officer, he may refer the case to a Reserve Forces Appeal Tribunal³.

Members of the Royal Fleet Reserve can be required to train for up to 16 days in aggregate in any one year or for such other periods as may be prescribed, none of which is to exceed 36 hours at any one time without the consent of the person concerned⁴. This liability will not normally, however, be enforced, although members of the Royal Fleet Reserve may volunteer to train or take part in exercises⁵.

1 See the Reserve Forces Act 1996 Pt VI (ss 50-64); and para 232 post.

2 See BR 64 *Regulations for the Naval and Marine Reserves* art 1305.

3 See *ibid* art 1306.

4 See the Reserve Forces Act 1996 s 22(1). As to training obligations generally see para 241 et seq post.

5 See BR 64 *Regulations for the Naval and Marine Reserves* art 0310.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/180. Recall Reserve.

180. Recall Reserve.

The Recall Reserve does not form part of the Royal Fleet Reserve¹ and is not a reserve force². It consists of ex-regular ratings and other ranks who have a recall liability³. The recall of reservists is authorised by Her Majesty by means of an order⁴.

Any member of the Recall Reserve with a recall liability who, as at 31 December 2000, had reported to the Registrar of Reserves his employment in a previously reserved occupation, is permitted to retain such status until either he leaves his current employment or his reserve liability ends, whichever is the sooner⁵.

While serving, any naval pensioner who is recalled will continue to receive his service pension⁶.

Members of the Recall Reserve are subject to the Naval Discipline Act 1957 from the time appointed for them to report or attend⁷.

Individuals with a recall liability may, if they meet the entry requirements, be admitted into the Royal Fleet Reserve (Non-Commissioned)⁸.

1 As to the Royal Fleet Reserve see para 175 ante.

2 The regulations for the Recall Reserve are set out in BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve*.

3 Ibid art 0507. See also para 179 ante. The recall liability ends at age 55 for those subject to the Reserve Forces Act 1980 (see para 173 ante); and for those subject to the Reserve Forces Act 1996 recall liability ends at age 55, or 6 years after leaving the Royal Navy or Royal Marines, whichever is the sooner: see s 56.

4 As to recall orders see para 246 post.

5 See BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve* art 0706.

6 See the Reserve Forces Act 1996 s 76. As to service pensions see para 162 et seq ante.

7 Naval Discipline Act 1957 s 111(4) (amended by the Reserve Forces Act 1996 s 131(1), Sch 10 para 12(3)); Reserve Forces Act 1996 s 96(2).

8 See BR 61 *Regulations for the Royal Fleet Reserve and Recall Reserve* art 0711. As to the Royal Fleet Reserve (Non-Commissioned) see para 175 ante.

UPDATE

180 Recall Reserve

TEXT AND NOTE 7--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (2) NAVAL RESERVE FORCES/181. The coastguard.

181. The coastguard.

The management and control of the coastguard is vested in the Secretary of State for Trade and Industry¹, but, whenever any emergency arises which, in the opinion of the Secretary of State for Defence², renders it advisable that the coastguard should be placed under his control, he may by order direct that its management and control be transferred to him, and, whilst such an order is in force, the officers and men of the coastguard become subject to the Naval Discipline Act 1957³ with such rank and rating and such pay and emoluments as may be determined by him⁴. As soon as the Secretary of State for Defence is of the opinion that the emergency has ended, the order must be revoked, but this is without prejudice to anything done under the order⁵.

1 See the Coastguard Act 1925 s 1(1). As to the function of the coastguard in relation to wrecks see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 987 et seq. As to the Secretary of State for Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 506.

2 As to the Secretary of State for Defence see para 2 ante.

3 The provisions of the Naval Discipline Act 1957 specifying the classes of persons who are subject to it (see paras 306, 309 et seq post) do not affect the application of the Act to any person to whom it applies by virtue of the Coastguard Act 1925: Naval Discipline Act 1957 s 138(2).

4 Coastguard Act 1925 s 2(1) (amended by the Naval Discipline Act 1957 s 137(1), Sch 6).

5 Coastguard Act 1925 s 2(2).

UPDATE

181 The coastguard

TEXT AND NOTES--Coastguard Act 1925 s 2 repealed: Armed Forces Act 2006 Sch 17.

NOTE 3--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/(i) Enlistment and Service/182. Origins and control.

(3) ROYAL MARINES

(i) Enlistment and Service

182. Origins and control.

The Royal Marines, who were originally ordinary soldiers serving on board ship, are now a separate military force specially raised for naval service¹. Their legal position, from the nature of the force and its functions, is anomalous, as their maintenance as a military force depends on the continuance in force of the Army Act 1955², but the cost is charged in the naval estimates³ and their government and control is almost entirely in the hands of the Admiralty Board of the Defence Council⁴.

1 The first appearance of a force resembling the Royal Marines was in 1664. Regiments were frequently raised for sea service, while ordinary land regiments were also sent on board ship. The first real establishment of marines dates from 1755: 1 Clode's *Military Forces of the Crown* pp 75, 265.

2 The Army Act 1955 s 210(1) includes the Royal Marines in the regular forces as a separate corps. For the meaning of 'regular forces' see para 8 note 5 ante. As to the continuance in force of the Army Act 1955 see para 3 ante.

3 See the annual Appropriation Act.

4 See the Army Act 1955 s 210(4), Sch 7 (as amended); and para 183 et seq post. See also the *Admiralty Board Directions 2000*, made by the Defence Council, printed in the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Annex B p xix. These regulations apply to the Royal Marines and are supplemented by other regulations and instructions. As to the Defence Council see para 2 ante.

UPDATE

182 Origins and control

NOTES 2, 4--Army Act 1955 replaced: Armed Forces Act 2006. For the meaning of 'regular forces' for the purposes of the Armed Forces Act 2006 see s 374, which also includes the Royal Marines as a separate corps.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/(i) Enlistment and Service/183. Enlistment.

183. Enlistment.

Enlistment in the Royal Marines¹ is for a period of 22 years² from the date of attestation³ or age 18, whichever is the later, followed by up to three years' Royal Fleet Reserve liability⁴. Persons who have not attained the age of 18 may be enlisted, but service before that age does not count for engagement or pension purposes. Persons who have completed a term of service may be enlisted for up to a further five years⁵. Persons who have completed periods of service may remain in the service, with the consent of the competent authority, for a period not exceeding 15 years⁶. Persons serving in the Royal Marines Reserve⁷ may enlist for a special term of up to one year, which may be extended to a total of two years⁸.

1 The terms of enlistment and the general conditions of service in the Royal Marines differ from those of the rest of the regular forces and are subject to regulations made by the Defence Council: see the Army Act 1955 ss 22, 210, Sch 7 (as amended). The principal regulations so made are the Royal Marines Terms of Service Regulations 1988, SI 1988/1395 (amended by SI 2000/1772; SI 2001/1520; SI 2002/201), which mirror in many respects the provisions for Royal Navy personnel (see para 156 et seq ante). However, those persons who entered the Royal Marines before 1 September 1988 are not affected by the regulations unless they so elect: see the Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 6 (amended by SI 2000/1772; SI 2001/1520). As to the offence of knowingly making a false statement on enlistment see the Army Act 1955 s 19 (as amended); and para 40 ante.

2 See the Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 3.

3 The procedure for attestation is set out in the Army Act 1955 s 2(2), Sch 1 (as amended): see para 197 post.

4 Royal Marines Terms of Service Regulations 1988 SI 1988/1395, reg 9. As to the liability of naval ratings to serve in the Royal Fleet Reserve see para 156 ante; and as to the Royal Fleet Reserve see para 175 ante. The period of service in the reserve following transfer is three years or the unexpired portion of the engagement, whichever is shorter: reg 9.

5 Ibid reg 4.

6 Ibid reg 11 (amended by SI 2000/1772; SI 2001/1520). As to the competent authorities see the Royal Marines Terms of Service Regulations 1988 SI 1988/1395, reg 11, Schedule (amended by SI 2000/1772).

7 See para 189 post.

8 Royal Marines Terms of Service Regulations 1988 SI 1988/1395, reg 5.

UPDATE

183 Enlistment

TEXT AND NOTES--SI 1998/1395 (as amended) replaced by the Royal Marines Terms of Service Regulations 2006, SI 2006/2917 (amended by SI 2009/1089).

NOTE 1--Army Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/(i) Enlistment and Service/184. Transfer and discharge.

184. Transfer and discharge.

A man may, with his consent, be transferred by order of the Defence Council¹ from the Royal Marines to another corps of the regular forces², or vice versa³, and a further order may be made by the Defence Council, as appropriate, varying the conditions of service of the man transferred so as to correspond as nearly as possible with his conditions of service immediately before transfer⁴.

Once he has served for two and a half years (that is, on completion of the standard initial training period), a person enlisted in the Royal Marines has the right to submit 12 months notice to leave the corps and transfer to the reserve⁵. New recruits who have not previously enlisted in the Royal Marines have the right to leave within their first six months' service, providing that they have first served for 28 days since the date of attestation⁶. During any period of up to five years' further service after the initial engagement, discharge is obtainable on 12 months' notice⁷. If a person has completed his period of service and been permitted to remain in the service beyond his original term, he must give 12 months notice⁸.

On becoming entitled to be discharged or transferred to the Royal Fleet Reserve⁹, a marine serving in the United Kingdom¹⁰ must be discharged or transferred with all convenient speed, but until discharged or transferred he is treated as if his period of service in the Royal Marines had not come to an end¹¹. A marine who becomes entitled to be discharged or transferred¹² whilst serving out of the United Kingdom must be returned to the United Kingdom free of cost with all convenient speed and be discharged or transferred there, or, if he consents to his discharge being delayed, within six months from his arrival¹³. He may elect to be discharged at the place where he is serving but in that case will have no claim to be sent elsewhere¹⁴.

1 As to the Defence Council see para 2 ante.

2 For the meaning of 'regular forces' see para 8 note 5 ante. For the meaning of 'corps' see para 192 post. The Royal Marines are a corps: Army Act 1955 s 210(1).

3 Ibid s 210(5), Sch 7 para 23 (amended by the Armed Forces Act 1971 s 75, Sch 3 para 4(2); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

4 Army Act 1955 Sch 7 para 24 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

5 Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 7 (amended by SI 2000/1772; SI 2001/1520). For a fuller explanation of the arrangements, also introduced into the Royal Navy at the same time, see para 156 note 8 ante.

6 Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 10 (substituted by SI 2001/1520). See also para 156 note 11 ante.

7 Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 4 (amended by SI 2002/201).

8 Royal Marines Terms of Service Regulations 1988, SI 1988/1395, reg 11 (amended by SI 2000/1772; SI 2002/201).

9 As to the Royal Fleet Reserve see para 175 ante. For other aspects of reserve service and recall of reserves see paras 176-180 ante, 189 post.

10 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

11 Army Act 1955 Sch 7 para 5(1), (2). Where a marine who has, or is reasonably suspected of having, committed an offence against naval discipline is entitled to discharge or transfer at a time before he has been tried and punished for the offence, s 131 (as amended) (trial and punishment of offences under military law notwithstanding offender ceasing to be subject to military law) applies with the necessary modifications: see Sch 7 para 5(5).

12 If transferred to the Royal Fleet Reserve: see para 183 ante.

13 Army Act 1955 Sch 7 para 5(2A)(a) (Sch 7 para 5(2A), (2B) added by the Armed Forces Act 1976 s 3(2), Sch 1 para 3). A marine who is discharged or is transferred to the reserve in the United Kingdom is entitled to be conveyed free of cost to the place where he was attested or to any place where he intends to reside: Army Act 1955 Sch 7 para 5(2B) (as so added).

14 Ibid Sch 7 para 5(2A)(b) (as added: see note 13 supra).

UPDATE

184 Transfer and discharge

TEXT AND NOTES 1-8--SI 1998/1395 (as amended) replaced by the Royal Marines Terms of Service Regulations 2006, SI 2006/2917 (amended by SI 2009/1089).

TEXT AND NOTES 9-14--Army Act 1955 replaced: Armed Forces Act 2006

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/ (ii) Discipline/185. Subjection to military law or naval discipline.

(ii) Discipline

185. Subjection to military law or naval discipline.

Officers and men of the Royal Marines are subject to military law¹. Officers and men of the Royal Marines Reserve² and marines in the Royal Fleet Reserve³ are also subject to military law when called into actual service or when being trained or exercised⁴. Officers and men of the Royal Marines or of those reserve forces are subject to naval discipline when borne on the books of any of Her Majesty's ships or naval establishments⁵, but they continue to be subject to military law⁶. In their application to the Royal Marines and those reserve forces, however, the Army Act 1955 and the Naval Discipline Act 1957 are subject to certain modifications⁷.

1 See the Army Act 1955 s 205 (as amended), s 210(1), (2)(a); and para 307 post.

2 As to the Royal Marines Reserve see para 189 post.

3 As to the Royal Fleet Reserve see para 175 ante.

4 Army Act 1955 ss 205(1)(a), (g), 210(2) (ss 205(1)(g), 210(2) amended by the Reserve Forces Act 1996 s 131, Sch 10 paras 1, 3, Sch 11).

5 Naval Discipline Act 1957 s 112(1) (amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2)). See para 306 post. For the meaning of 'Her Majesty's ships' see para 6 note 3 ante; and for the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

6 Army Act 1955 s 210(3) (amended by the Navy, Army and Air Force Reserves Act 1959 s 2, Schedule; the Armed Forces Act 1971 s 75, Sch 3 para 4(1); and the Reserve Forces Act 1996 Sch 10 para 4).

7 See paras 183-184 ante, 186-187 post.

UPDATE

185 Subjection to military law or naval discipline

TEXT AND NOTES--Army Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/ (ii) Discipline/186. Special provisions as to Royal Marines when subject to naval discipline.

186. Special provisions as to Royal Marines when subject to naval discipline.

When a Royal Marine is subject to naval discipline¹, reduction to the ranks or any less reduction in rank is substituted for the punishment of disrating in the naval penal code², and a marine may be reduced in rank summarily by his commanding officer notwithstanding that he could not be so reduced under military law³. The trial of a marine who has committed an offence, other than mutiny or desertion, while subject to naval discipline must be begun within three months or, in the case of trial by court-martial, six months after the date on which he ceased to be subject to service law⁴.

1 See para 185 ante.

2 Naval Discipline Act 1957 s 43(1)(h), Sch 1 para 1 (s 43(1), Sch 1 paras 1, 2 substituted by the Armed Forces Act 1971 ss 38, 43, Sch 1 para 2(6)). For the scale of punishments under the naval penal code see para 424 post. A sentence of imprisonment or detention imposed on a marine involves reduction to the ranks: Naval Discipline Act 1957 s 43(4), Sch 1 para 2 (as so substituted; and s 43(4) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 1(2)). See also para 425 post.

3 Ibid Sch 1 para 3 (amended by the Armed Forces Act 1996 s 5, Sch 1 para 95). As to the summary procedure see para 350 post. This power exists notwithstanding the provisions of the Army Act 1955 s 201 (as amended) (restrictions on reduction in rank of warrant officers and non-commissioned officers): Naval Discipline Act 1957 Sch 1 para 3 (as so amended).

4 Ibid s 52(2), (3), Sch 1 para 4 (s 52(2) amended by the Armed Forces Act 1981 s 6(6); and the Naval Discipline Act 1957 s 52(3) substituted by the Armed Forces Act 1971 s 41; and amended by the Armed Forces Act 1986 s 7(3)). 'Service law' means the Naval Discipline Act 1957, military law or air force law: ss 8, 135(1). As to the limitation of time, especially in relation to civil offences, see para 304 post.

UPDATE

186 Special provisions as to Royal Marines when subject to naval discipline

TEXT AND NOTES--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/ (ii) Discipline/187. Special provisions as to Royal Marines under military law.

187. Special provisions as to Royal Marines under military law.

The provisions of military law regarding deductions from pay towards the maintenance of a wife or child or in satisfaction of a maintenance or affiliation order¹ do not apply to the marines². Royal Marines are not enlisted for general service but appointed directly to the Royal Marines³. Reference to a military authority is modified to include reference to a naval authority in the provisions of military law relating to confessions of desertion⁴ and to deductions from pay for payment of civil penalties⁵.

1 Ie the Army Act 1955 ss 150-151 (as amended): see paras 74-75 ante.

2 Ibid s 210(4), Sch 7 para 19 (substituted by the Armed Forces Act 1976 s 3(1), Sch 1 para 2; and amended by the Armed Forces Act 1981 s 28(1), Sch 4 para 1(2)). The Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 does apply to the Royal Marines: see s 1 (as amended); and para 76 ante. The provisions as to deductions from pay in respect of judgment debts (ie the Army Act 1955 s 151A (as added)) also apply: see para 74 ante.

3 Army Act 1955 s 3(1), (2), Sch 7 para 6 (amended by the Armed Forces Act 1976 s 22(6), Sch 10; and the Armed Forces Act 1981 ss 4(2), 28(2), Sch 5 Pt II).

4 Ie the Army Act 1955 s 81 (as amended): see para 374 post.

5 Ibid Sch 7 para 16 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). The provisions relating to deductions from pay for payment of civil penalties are those of in the Army Act 1955 s 146 (as substituted): see para 218 post.

UPDATE

187 Special provisions as to Royal Marines under military law

TEXT AND NOTES--Army Act 1955 replaced: Armed Forces Act 2006.

NOTE 2--Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/ (ii) Discipline/188. Rank and command.

188. Rank and command.

When subject to naval law, marines are in all matters under the ultimate command of the commanding officer and of the executive officer of the ship in which they may be, and of the officer of the watch for the time being, whatever his rank¹. In their distinctive duties as marines, officers and non-commissioned officers exercise command in accordance with their rank, but, in any duty which they are ordered by a superior naval officer to carry out in conjunction with naval officers and ratings, they take command according to their relative rank unless, owing to the particular nature of the duty, the superior naval officer otherwise directs². Officers of the Royal Marines, except officers of the band service, are entitled to exercise military command³. The power of sea command may be conferred on officers and other ranks of the Royal Marines only by specific appointment or by direction of a superior authority himself entitled to sea command⁴. A Royal Marine officer appointed in command or as executive officer of a ship or naval establishment exercises the same command as would be exercised by an officer of the Royal Navy holding the same appointment⁵.

1 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para 0334.

2 Ibid Ch 3 para 0334. For the relative rank of marine officers and naval officers see Ch 3 para 0301, Table J3-1.

3 Ibid Ch 3 para 0372(2). As to military command see para 155 ante.

4 Ibid Ch 3 para 0372(2). See para 155 ante.

5 Ibid Ch 3 para 0372(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (3) ROYAL MARINES/(iii) Reserve Marine Forces/189. The Royal Marines Reserve.

(iii) Reserve Marine Forces

189. The Royal Marines Reserve.

The Secretary of State is empowered to maintain the reserve volunteer force of marines known as the Royal Marines Reserve¹ and to make regulations for that purpose². An applicant must usually reside in the United Kingdom and must be a holder of British nationality, a Commonwealth citizen or a citizen of the Irish Republic³.

Applicants for a commission must be between the ages of 18 and 30⁴. They may remain on the active list of the Royal Marines Reserve until the compulsory retirement age for their rank⁵ but are eligible to be placed earlier on the retired list provided they meet certain requirements⁶. Officers may be discharged or required to resign their commissions for misconduct, inefficiency, unsuitability, physical unfitness or continual failure to meet their training obligation⁷.

Those wishing to enlist as other ranks in the Royal Marines Reserve must be between the ages of 17 and 30 (although applicants may, exceptionally, enlist after this age)⁸. Other ranks are initially enlisted for four years⁹, and may re-enrol for two, three or four years, up until their forty-fifth birthday; they may, exceptionally, be allowed to extend their service beyond that age¹⁰. The Defence Council¹¹ and the Royal Marines Reserve Unit Commanding Officers may at any time discharge other ranks of the Royal Marines Reserve, and, except when on permanent service¹², a man may obtain his discharge by giving one month's notice in writing¹³.

When called to actual service or being trained or exercised, officers and other ranks of the Royal Marines Reserve are subject to military law¹⁴. When borne on the books of any of Her Majesty's ships or naval establishments they are subject, in addition, to naval discipline¹⁵.

1 See the Reserve Forces Act 1996 s 1; and para 173 ante. For detailed provisions relating to Naval Reserve Forces generally, and their call out or recall liability, see para 173 et seq ante.

2 See *ibid* s 4; and para 173 ante. The regulations for the Royal Marines Reserve are contained in BR63 *Regulations for the Royal Marines Reserve*; and the *Royal Marines Reserve Administrative Instructions*.

3 See the *Royal Marines Reserve Administrative Instructions* arts 0401, 0501. As to British nationality see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM. As to the Commonwealth see COMMONWEALTH.

4 See BR63 *Regulations for the Royal Marines Reserve* art 0108.

5 See the *Royal Marines Reserve Administrative Instructions* art 0420.

6 See *ibid* art 0419.

7 See *ibid* art 0421.

8 See BR63 *Regulations for the Royal Marines Reserve* art 0109.

9 See *ibid* art 0109.

10 See *ibid* art 0110.

11 As to the Defence Council see para 2 ante.

12 Eg when called out for service or on full time reserve service: see para 232 post.

13 See BR63 *Regulations for the Royal Marines Reserve* art 0115.

14 See the Army Act 1955 s 210(3); and para 185 ante.

15 Naval Discipline Act 1957 s 111(3) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 12(2)). For the meaning of 'Her Majesty's ships' see para 6 note 3 ante; and for the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

UPDATE

189 The Royal Marines Reserve

TEXT AND NOTES 14, 15--Army Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/2. NAVAL FORCES/ (4) BOARDS OF INQUIRY/190. Powers and procedure.

(4) BOARDS OF INQUIRY

190. Powers and procedure.

Boards of inquiry may be used by any flag officer or any administrative authority authorised by a commander-in-chief to enable him to ascertain the facts relating to a particular incident¹. Boards of inquiry in the Royal Navy are not governed by statute or extensive statutory rules². Unless otherwise ordered, such inquiries are held in private. Any serving man or woman whose conduct may be questioned or who may be in danger of subsequent disciplinary proceedings must be invited to be present during the examination of witnesses and to have a friend or adviser with him. The friend may, with the permission of the board, address it and, subject to the board's discretion, ask questions to test the evidence of witnesses and comment on it. At the conclusion of the inquiry any person held to blame by the board is usually entitled to a copy of the minutes of evidence but not to the other portions of the report. Any civilian witnesses called to give evidence may be accompanied by a friend or adviser and, if it appears to the board that the conduct of any civilian person called to give evidence may be in question, the president of the board may invite that person and any friend or adviser to be present during the examination of other witnesses and to ask questions to test the evidence of witnesses and to address the board. Before examination every naval witness is warned that he is privileged to refuse to answer any question the answer to which may tend to expose him to any penalty or forfeiture³. There is no power at naval boards of inquiry to examine witnesses on oath⁴. Neither the record of proceedings of a board of inquiry nor any confession, statement or answer to any question made to a board of inquiry by a person who is subsequently tried by court-martial is admissible as evidence at such a trial against the accused, nor may he be cross-examined on any such confession, statements or answers. Witnesses at a court-martial may be cross-examined on statements or answers to questions made by them to a naval board of inquiry⁵.

1 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 57 para 5701.

2 Cf the position of army and air force inquiries: see para 257 et seq post.

3 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 57 para 5704.3.

4 Ibid Ch 57 para 5704.2.

5 Manual of Naval Law vol I Ch 12 art 1296. As to naval courts-martial see para 448 et seq post.

UPDATE

190 Powers and procedure

TEXT AND NOTES--The Secretary of State may make regulations for causing inquiries, to be known as service inquiries, to be held (whether or not in the United Kingdom) in prescribed circumstances in relation to matters connected with any of Her Majesty's forces: Armed Forces Act 2006 s 343(1). For these purposes, 'Her Majesty's forces' do not include any Commonwealth force: s 374. The regulations may in particular make provision with respect to: (1) the persons, to be known as a service inquiry panel, who are to conduct a service inquiry; (2) the functions of a service inquiry panel; (3) the matters that may, or must, be referred to a service inquiry panel; (4) the persons who

may convene, and refer matters to, a service inquiry panel; (5) the procedure of service inquiry panels; (6) evidence, including the admissibility of evidence; and (7) the representation of witnesses and other persons: s 343(2). Without prejudice to the generality of s 343(1), (2), the regulations may make provision (a) conferring on a person designated for the purpose by the Secretary of State power to determine, in prescribed circumstances, that a matter of a kind that must be referred to a service inquiry panel need not be so referred (and as to the recording of such a determination); (b) as to oaths and affirmations for witnesses and other persons; (c) conferring on prescribed persons a right, subject to such exceptions as may be prescribed, to be present at proceedings of a service inquiry panel; (d) for procuring the attendance of witnesses and other persons and the production of documents and other things (including the giving of notices by judge advocates); (e) about the payment of expenses to persons attending proceedings of service inquiry panels; (f) for the making and retention of records of the proceedings of service inquiry panels; (g) for the supply of copies of such records, including provision about the fees payable for the supply of such copies; (h) for evidence given before service inquiry panels not to be admissible at a summary hearing or in proceedings before a court of a prescribed description, except in the case of proceedings for an offence of a prescribed description: s 343(3). The regulations may also make provision which is equivalent to that made by any provision of the Inquiries Act 2005 s 35 (offences in connection with inquiries) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15A.8), subject to such modifications as the Secretary of State considers appropriate: s 343(4). Where the regulations create an offence they may provide that the offence is a service offence and is punishable by any punishment mentioned in s 164 Table rows 7-12 (not yet in force), or that the offence is an offence triable summarily by a civilian court in the United Kingdom, the Isle of Man or a British overseas territory and is punishable by a fine not exceeding level 3 on the standard scale: s 343(5). For these purposes 'prescribed' means prescribed by regulations under this provision: s 343(6). 'Civilian court' means a court of ordinary criminal jurisdiction: s 374. In exercise of his powers under s 343, the Secretary of State has made the Armed Forces (Service Inquiries) Regulations 2008, SI 2008/1651.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/191. Meaning of 'regular forces'.

3. LAND AND AIR FORCES

(1) ENLISTMENT AND SERVICE

(i) The Regular Forces (Army)

191. Meaning of 'regular forces'.

For the purposes of the Army Act 1955, 'regular forces'¹ means any of Her Majesty's military forces² other than the Army Reserve³, the Territorial Army⁴, and forces raised under the law of a colony⁵. However, officers of the Army Reserve⁶ and officers who have retired⁷ are to be treated as members of the regular forces for some purposes⁸ while they are subject to military law⁹. Officers of the Territorial Army, when in permanent or full time service¹⁰ or while they are called out for home defence service¹¹ or are undergoing training¹², are likewise treated for some purposes as members of the regular forces¹³, as are warrant officers, non-commissioned officers and men of the Army Reserve and the Territorial Army while they are subject to military law¹⁴. A colony may raise a military force under its own law¹⁵, and any such force is part of Her Majesty's military forces¹⁶. No Commonwealth force¹⁷ is part of Her Majesty's military forces unless it is expressly provided that it is to be included¹⁸.

1 The term 'regular forces' is used by statute solely in connection with the army: see the Army Act 1955 s 225(1). The corresponding term in reference to the Royal Air Force is 'regular air force': see the Air Force Act 1955 s 223(1); and para 206 post.

2 'Her Majesty's military forces' does not include any Commonwealth force unless it is otherwise expressly provided: see the Army Act 1955 s 225(1); and the text and notes 17-18 infra. The Royal Marines form a separate corps of the regular forces: s 210(1). For the meaning of 'corps' see para 192 post.

3 As to the Army Reserve see para 225 et seq post.

4 As to the Territorial Army see para 225 et seq post.

5 Army Act 1955 s 225(1) (amended by the Reserve Forces Act 1996 s 131(2), Sch 11). Subject to certain modifications, the Army Act 1955 applies to women members of the regular forces as to men: see s 213; and para 18 ante. For certain purposes, references to the regular forces may include: (1) the reserve forces and the Territorial Army (see s 211); (2) members of a colonial force (see s 207(3)); (3) members of the Royal Irish Regiment (see the Reserve Forces Act 1980 s 142 (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 Sch 11)). As to the reserve forces and the Territorial Army see para 225 et seq post; and as to members of a colonial force see para 313 post. As to the Royal Irish Regiment see para 227 post. As to the meaning of 'colony' see para 20 note 4 ante.

6 Ie including officers of the Royal Marines Reserve and the Royal Fleet Reserve: Army Act 1955 Sch 7 para 22(a) (amended by the Armed Forces Act 1981 Sch 4 para 1; and the Reserve Forces Act 1996 Sch 10 para 8). As to the Royal Marines Reserve see para 189 ante; and as to the Royal Fleet Reserve see para 175 ante.

7 Ie within the meaning of any royal warrant: Army Act 1955 s 211(1)(a). 'Royal warrant' means the warrant or warrants of Her Majesty for the time being in force for regulating the pay and promotion of the army: s 225(1).

8 Ie where the Army Act 1955 expressly so provides: see ss 211, 225(1).

9 See *ibid* s 211(1)(a). For the times at which such officers are subject to military law see para 247 post.

- 10 See para 232 post.
- 11 See para 232 post.
- 12 As to training see para 244 post.
- 13 See the Army Act 1955 s 211(1)(b) (substituted by the Reserve Forces Act 1996 Sch 10 para 7).
- 14 Army Act 1955 s 211(1)(c). As to when such persons are subject to military law see para 247 post. The reservists specified in s 211(1)(c) in fact comprise the entire personnel of the Army Reserve, which contains no commissioned officers: see para 223 post. An army pensioner recalled for service is deemed to be enlisted in the regular forces, unless on his recall he requires to be enlisted in accordance with s 2 (as amended) (see paras 196-197 post): see the Reserve Forces Act 1980 s 32(3) (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 Sch 11); and para 237 post. As to enlistment see para 194 et seq post.
- 15 See the Army Act 1955 s 207(1). The Army Act 1955 has limited application to such a force: see s 207(2); and para 10 ante.
- 16 See the text *supra*.
- 17 For the meaning of 'Commonwealth force' see para 20 note 6 ante.
- 18 Army Act 1955 s 225(1). See also para 20 ante.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

191 Meaning of 'regular forces'

TEXT AND NOTES--For the purposes of the Armed Forces Act 2006 (see PARA 12-26), the 'regular forces' means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force, and references to 'a regular force' are to be read accordingly: Armed Forces Act 2006 s 374.

NOTE 5--Reserve Forces Act 1980 s 142 repealed: Armed Forces Act 2006 Sch 14 para 20.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/192. Elements of the regular forces.

192. Elements of the regular forces.

The regular forces are composed of officers and soldiers of various arms and services who have a definite liability for service¹. 'Corps' means any such body of Her Majesty's military forces as may from time to time be declared by warrant of Her Majesty to be a corps for the purposes of the Army Act 1955². A unit is a division of a corps, and is defined as an element having a separate establishment³.

1 See the Queen's Regulations for the Army 1975 para 1.006. The regular forces comprise the corps and regiments specified in the list in para 8.001, plus the Royal Army Chaplains' Department and the Army Legal Corps (the numbering in this list is for the purpose of determining precedence on ceremonial occasions). For the meaning of 'regular forces' see para 191 ante.

2 Army Act 1955 s 225(1) (amended by the Army and Air Force Act 1961 s 38(1), Sch 2). Unless a state of war exists or a call out order under the Reserve Forces Act 1996 s 52 (see para 232 post) is in force authorising the call out for permanent service of members of the reserve, a soldier may not be transferred from one corps to another except on the order of a member of the Army Board or with his own consent: Army Act 1955 s 3(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I; and the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086). As to the Army Board see para 2 ante.

3 Queen's Regulations for the Army 1975 para 1.007. Establishments lay down authorised strengths by ranks and trades and numbers of vehicles and weapons, and are of three kinds, ie War Establishments, Peace Establishments and Establishments (Peace and War) (the last-mentioned being for units and headquarters whose establishments are the same in peace and war): see para 1.008. The size and nature of a unit will depend on the circumstances existing at any particular time. In the military hierarchy, the unit is at the lowest level, and the individual officer or soldier is posted to a unit for the purposes of general administration and discipline. No-one has any right to serve in any particular unit of his corps, but an officer's application to serve in a particular unit will be given such consideration as the exigencies of the service may permit: see the Army Act 1955 s 3(1); Queen's Regulations for the Army 1975 para 9.005(a).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/193. Commissions.

193. Commissions.

Persons may join the regular forces either as officers¹ or as soldiers². Appointments to first commissions as officers are governed by the provisions of the Pay Warrant³. A commission may be regular (that is, a permanent commission), special regular (that is, for a limited period, in certain arms of the service⁴), short service (that is, for a fixed period), short service limited (that is, for school leavers waiting to attend a university) or emergency. Trafficking in commissions is an indictable offence⁵. An officer has no right to resign his commission, but he may apply for permission to do so⁶.

1 There is no statutory definition of 'officer'. Provision for the commissioning of officers into the land forces (ie the regular, reserve and auxiliary military forces (other than marine forces) raised under the law of the United Kingdom or of any colony) or the Royal Marine forces and their reserve is made by Orders in Council which, not being statutory instruments, are not recorded in this work. As to the meaning of 'United Kingdom' see para 20 note 1 ante; and as to the meaning of 'colony' see para 20 note 4 ante. As to ranks held by officers see the Queen's Regulations for the Army 1975 paras 2.031 et seq, J2.042 et seq, and 9.010 et seq. As to chaplains see the Army Chaplains Act 1868 s 2; the Queen's Regulations for the Army 1975 para 2.034; and ECCLESIASTICAL LAW vol 14 paras 729-730. Any document purporting to be issued by or on behalf of the Defence Council specifying rank or appointment is evidence thereof: see the Army Act 1955 s 198(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the Defence Council see para 2 ante. An officer holds his commission at the will of the Crown and may not bring an action for wrongful dismissal: *Re Tufnell* (1876) 3 ChD 164; *R v Secretary of State for War* [1891] 2 QB 326, CA; *Woods v Lyttleton* (1909) 25 TLR 665, CA; *Kynaston v A-G* (1933) 49 TLR 300, CA.

2 'Soldier' is not defined by statute, but it is used exclusively with reference to members of the regular forces. For the meaning of 'regular forces' see para 191 ante. In the Army Act 1955 Pt I (ss 1-23) (as amended), and Pt IV (ss 154-176) (as amended), and in the Reserve Forces Act 1980 Pt IV (ss 62-87) (prospectively repealed), 'soldier' includes a warrant officer and a non-commissioned officer: Army Act 1955 ss 23(2), 176; Reserve Forces Act 1980 s 87 (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11). 'Soldier' includes persons of either sex: see the Armed Forces Act 1981 s 20(1), Sch 3 para 1(1). Some provisions of the Army Act 1955 refer to 'soldiers of the regular forces' (see eg s 9(1), (1A)-(1C) (substituted by the Reserve Forces Act 1996 s 126, Sch 7 para 1(2)) and others simply to 'soldiers' (see eg the Army Act 1955 s 9(5), (6)). The corresponding expression referring to members of the Army Reserve or the Territorial Army is 'man': see eg the Reserve Forces Act 1996 s 2. As to soldiers' ranks see the Queen's Regulations for the Army 1975 paras J2.042, 9.167 et seq.

3 See *ibid* para 9.0001.

4 These are chiefly intended for older entrants. There are prospects, in some arms of the service, of conversion to regular commissions. For the rules determining an officer's age for official purposes see *ibid* Ch 9 Annex A para 1.

5 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 535.

6 Queen's Regulations for the Army 1975 para 9.022. See also *Parker v Lord Clive* (1769) 4 Burr 2419; *Vertue v Lord Clive* (1769) 4 Burr 2472; *Ex p Trenchard* (1874) LR 9 QB 406 at 408; *R v Cumming, ex p Hall* (1887) 19 QBD 13, DC; *Hearson v Churchill* [1892] 2 QB 144, CA.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the

Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/194. Relationship between the Crown and enlisted persons.

194. Relationship between the Crown and enlisted persons.

The Crown is permitted to engage a standing army in time of peace only as provided by statute¹. Therefore, as there is in this respect no residuary power of the prerogative upon which Crown authority may rely², any purported engagement of personnel not authorised by statute for an army is null and void. The authority for the relationship between the Crown and a person enlisting in its military service depends therefore on statutory provisions³ and, unlike the terms and conditions of service which form the relationship⁴, is neither contractual⁵ nor dependent on the prerogative⁶. Although the conditions of enlistment and service were dependent on and are exercised through the royal prerogative, they are now specially laid down by statute⁷ or regulations of the Defence Council⁸ issued pursuant to statute⁹. While such terms may, therefore, be altered without the consent of the person enlisted, any alteration can only be either by statute¹⁰ or by regulation within the powers given to the Defence Council by statute.

1 See the Bill of Rights (1688) s 1; and para 8 ante. Moreover, compulsory military service was declared illegal by 16 Car 1 c 28 (Impressment of Soldiers) (1640) (repealed). Any right or privilege of the Crown to enforce such service was not restored by the repeal of that statute by the Statute Law Revision Act 1863: see generally STATUTES vol 44(1) (Reissue) para 1306.

2 Cf the position regarding the Royal Navy, the existence of and authority for which rests fundamentally on the prerogative: see para 6 ante. See, however, note 6 infra.

3 As to the relationship of the Crown and its executive appointees see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 351 et seq. Where a general authority is granted to the Crown to engage military personnel and the terms are left to the Crown's discretion (eg as to regulating the chain of command (see the Army Act 1955 s 177; and para 2 ante), issuing commissions (see para 193 ante), and the payment of salary (see *Lucas v Lucas and High Comr for India* [1943] P 68, [1943] 2 All ER 110; and note 7 infra)), then the relationship as regards those terms is identical with any other discretionary engagement in that it cannot bind the Crown.

4 See para 4 ante.

5 See *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457 at 488, [1955] 1 All ER 846 at 857, PC; *IRC v Hambrook* [1956] 2 QB 641 at 653, [1956] 1 All ER 807 at 811 per Lord Goddard CJ. See also para 4 ante.

6 In circumstances, however, of sudden invasion and dangerous rebellion, the Crown is still apparently entitled as a prerogative right to the personal service of every man capable of bearing arms: see *Broadfoot's Case* (1743) Fost 154 at 158, 175; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 819.

7 See generally the Army Act 1955; and para 195 et seq post. See also the Civil Defence (Armed Forces) Act 1954 (granting a designated minister authority to provide training in civil defence for members of the armed forces); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 539 et seq. If employment by the Crown is dependent upon regulations issued under authority other than statute (eg by the Defence Council on behalf of the Sovereign under prerogative powers), such regulations cannot affect the Crown's prerogative powers in relation to the conditions of employment: see *Riordan v War Office* [1959] 3 All ER 552, [1959] 1 WLR 1046 (affd [1960] 3 All ER 774n, [1961] 1 WLR 210, CA); and para 4 ante. As to the Defence Council see para 2 ante.

8 Eg the Army Terms of Service Regulations 1992, SI 1992/1365 (see para 14 ante); the Army Terms of Service (Part-time Service in Northern Ireland) Regulations 1992, SI 1992/1366.

9 For the power to make regulations see the Army Act 1955 s 22 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

10 Eg as provided for by the Army Act 1955 s 3(4): see para 195 post.

UPDATE**191-216 Enlistment and Service**

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

194 Relationship between the Crown and enlisted persons

NOTE 8--SI 1992/1365 replaced: SI 2007/3382 (amended by SI 2009/1089). SI 1992/1366 revoked: SI 2008/1849.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/195. Initial appointment and transfer.

195. Initial appointment and transfer.

In pursuance of Defence Council regulations¹, recruits may be enlisted for service in a particular corps², but, except as such regulations provide, they are enlisted for general service³. In the latter case the recruit is to be appointed as soon as practicable to such corps as the competent military authority⁴ thinks fit, but, if he has enlisted before attaining the age of 18, he need not be appointed to a corps until he reaches that age⁵. Any transfer from the corps to which a soldier is appointed, if not by the orders of a member of the Army Board⁶, must be with the soldier's consent, unless a state of war exists or a call out order⁷ is in force authorising the call out for permanent service of members of the reserve⁸. When properly made, the transfer may be to an arm or branch⁹ different from that in which the soldier was last serving, and, when this occurs, the conditions of his service may be varied so as to correspond to those of the arm or branch to which he is transferred¹⁰. There are no provisions for transfer of an officer from one corps to another without a request for such a transfer from the officer¹¹. If a request is made it is forwarded to the Army Commissions Board, the decision of which is final¹².

¹ Defence Council regulations are not statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

² For the meaning of 'corps' see para 192 ante.

³ Army Act 1955 s 3(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

⁴ 'Competent military authority' means the Defence Council or any prescribed officer: Army Act 1955 s 23(1) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

⁵ Army Act 1955 s 3(2).

⁶ As to the Army Board see para 2 ante.

⁷ ie under the Reserve Forces Act 1996 s 52: see para 232 post.

⁸ Army Act 1955 s 3(3) (amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9(2)); Queen's Regulations for the Army 1975 para 9.200. As to when the reserve is deemed to be called out for this purpose see paras 131 note 4 ante, 232 post. As to voluntary transfers see the Queen's Regulations for the Army 1975 paras 9.200, 9.201, 9.209-9.228.

⁹ 'Arm' and 'branch' are not defined by statute or regulation.

¹⁰ Army Act 1955 s 3(4).

¹¹ See the Queen's Regulations for the Army 1975 paras 9.007-9.009.

¹² See *ibid* paras 9.008, 9.009.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the

Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/196. Persons who may be enlisted.

196. Persons who may be enlisted.

No person¹ under the appropriate minimum age (that is, 18 years or such lower age as may be prescribed for the time being for any class of recruits²) may be enlisted without the written consent of his parent or guardian³. Aliens may serve in the regular forces⁴, but the number serving at any time must not exceed one-fiftieth⁵ of the aggregate number of those forces serving at that time⁶.

1 le person of either sex: see the Armed Forces Act 1981 s 20(1), Sch 3 para 1(1).

2 Army Act 1955 s 2(5) (substituted by the Armed Forces Act 1971 s 63(1)). 'Prescribed' means prescribed by regulations made by the Defence Council: Army Act 1955 ss 22, 23(1) (s 22 amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Defence Council regulations are not statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

Where a recruiting officer is satisfied, by the production of a copy of a birth certificate or other sufficient evidence, that a person has or has not attained the appropriate minimum age, that person is deemed to have, or, as the case may be, not to have, attained that age, and the officer's certificate is sufficient evidence that he is so satisfied: Army Act 1955 s 2(4).

3 Ibid s 2(3)(a), (b) (amended by the Armed Forces Act 1966 s 37(1), Sch 4). If there is no guardian, or if after reasonable inquiry it cannot be ascertained whether there is a guardian, consent may be given by any person in whose care (whether in law or in fact) the person offering to enlist may be: Army Act 1955 s 2(3)(c).

4 For the meaning of 'alien' see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 13. For the meaning of 'regular forces' see para 191 ante.

5 The Defence Council may substitute any other fraction when a state of war exists between Her Majesty and a foreign power, or while a call out order under the Reserve Forces Act 1996 s 52 (see para 232 post) is in force authorising the call out for permanent service of members of the reserve: Army Act 1955 s 21(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I; and the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9(4)).

6 Army Act 1955 s 21(1). In reckoning the number of aliens in serving units there must be excluded persons enlisted outside the United Kingdom and serving in such units, if any, as may be prescribed, and officers serving in such units: s 21(2). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

196 Persons who may be enlisted

TEXT AND NOTES 4-6--As to restrictions on aliens in the regular forces, see now the Armed Forces Act 2006 s 340. For the meaning of 'regular forces' see PARA 191. See also the Armed Forces (Aliens) Regulations 2009, SI 2009/835, which provide that the Armed Forces Act 2006 s 340 does not apply to a citizen or national of Nepal who serves, or has for not less than five years served, in the Brigade of Gurkhas.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/197. Procedure on enlistment.

197. Procedure on enlistment.

A person offering to enlist in the regular forces must obtain from an authorised recruiting officer¹ a notice setting out the general conditions of the proposed engagement and the questions to be answered on attestation². The recruiting officer must ensure that the notice is fully understood by the person offering to enlist³. If the recruit agrees to be enlisted he is to be cautioned against making a false answer⁴, and the questions contained in the attestation paper are to be put to him and his answers recorded on the paper itself⁵. On signing the declaration contained in the attestation paper and taking the oath of allegiance⁶, the recruit becomes an enlisted soldier⁷ of the regular forces⁸. A person is, however, deemed to be a soldier of the regular forces without attestation if he has received pay as such, although he may claim his discharge at any time⁹. When a person has signed the declaration in the attestation paper and has thereafter received pay as a soldier of the regular forces, the validity of the enlistment cannot be questioned on the grounds of error or omission in the attestation paper, but for three months from the signing of the declaration he may challenge the validity of his enlistment on any other grounds¹⁰. After the expiration of that period of three months, he is deemed to have been validly enlisted, notwithstanding any non-compliance with the prescribed procedure for enlistment or any other grounds for claiming that his enlistment is invalid; and despite any such non-compliance or other grounds, or the making of any such claim, he is deemed to be a soldier of the regular forces until his discharge¹¹.

1 For the persons authorised to enlist recruits in the regular forces see the Army Act 1955 s 1 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I); and regulations of the Defence Council made thereunder. Defence Council regulations are not statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante. For the meaning of 'regular forces' see para 191 ante.

2 Army Act 1955 s 2(1).

3 Ibid s 2(1).

4 Ibid s 2(2), Sch 1 para 1. For penalties for knowingly making a false answer see ss 19, 61; and paras 40 ante, 413 post. It is an offence, punishable by a fine not exceeding level 2 on the standard scale, to use any statement as to character or previous employment knowing it to be false in any material particular: Seamen's and Soldiers' False Characters Act 1906 s 2 (amended by the Criminal Law Act 1977 s 31(6)); the Forgery and Counterfeiting Act 1981 s 30, Sch 1 Pt I; and the Criminal Justice Act 1982 s 46(1), (4)). As to the standard scale see para 40 note 4 ante. A like fine may be incurred by any person making a written statement as to the character or previous employment of any man which he knows to be false in a material particular and which he allows or intends to be used by that man for purposes of enlistment: Seamen's and Soldiers' False Characters Act 1906 s 2 (as so amended). The Act was made applicable to the Royal Air Force by the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. See also para 40 ante.

5 Army Act 1955 Sch 1 para 2. Although the attestation paper is evidence that the answers recorded were given, it is not evidence that those answers were true: *Chertsey Union v Surrey Clerk of the Peace* (1893) 69 LT 384. The recruiting officer must then ask the recruit to sign the declaration that the answers are true, and administer the oath of allegiance: Army Act 1955 Sch 1 para 3.

6 A person who offers to enlist is entitled to make an affirmation instead of taking the oath: ibid s 225(1); and see *Towler v Sutton* (1916) 86 LJB 46, DC. In the case of aliens, the Defence Council may make regulations excluding the necessity to take the oath of allegiance: Army Act 1955 s 21(5) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

7 The act of enlistment is not statutorily defined. It is possible for a person already enlisted to enlist a second time. However, for an officer to re-enlist without having resigned his commission, or for a warrant officer, non-

commissioned officer or soldier to re-enlist without having been discharged from his existing engagement, could be evidence of an intention to remain permanently absent from the place required in the fulfilment of the duties of that engagement, and so of desertion from that place: see para 404 post.

8 Army Act 1955 Sch 1 para 4. The recruiting officer must attest by signature that the statutory requirements have been carried out and must deliver the attestation paper to the person prescribed by the Defence Council: Sch 1 para 5 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). When the recruit is finally approved for service the approving officer must at his request furnish him with a certified copy of the attestation paper: Army Act 1955 Sch 1 para 6.

9 Ibid s 18(2). He must be discharged with all convenient speed: s 18(2)(b).

10 Ibid s 18(1)(a), (b). In the case of a person who made the declaration before he had obtained the appropriate minimum age (see para 196 ante), the claim may be made by someone whose consent was required but not obtained: s 18(1) (amended by the Armed Forces Act 1966 s 37(1), Sch 4).

11 Army Act 1955 s 18(1)(c), (d). Consequently such a person is subject to military law: see para 307 post. Nothing in these provisions prejudices the determination of any question as to the term for which a person was enlisted or prevents the discharge of a person who has not claimed his discharge: s 18(3). In relation to men of the Royal Marines, s 18 has effect subject to minor modifications: see s 210(4), Sch 7 para 7 (s 210(4) amended by the Reserve Forces Act 1996 s 131(1), Sch 10 para 5).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

197 Procedure on enlistment

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 4--1906 Act repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/198. Terms of enlistment; extension or reduction of period of service.

198. Terms of enlistment; extension or reduction of period of service.

A person may be enlisted¹ in the regular army for a term beginning with the date of the entrant's attestation² and expiring either 22 years, or between 6 months and 12 years, after that date³, except in the cases of entrants the expiration of whose periods of service is reckoned from the date on which the entrant attains the age of 18⁴ and in the case of local service engagement⁵. The term for which a person is enlisted may consist wholly of army service or partly of army service and partly of service in the reserve⁶.

A person in army service enlisted for a term of shorter duration than the longest term specified above may, after giving notice to the competent military authority⁷ and with that authority's approval, be treated as if he had enlisted for an extended term (which may include service in the reserve)⁸. The Defence Council may also make regulations enabling a person to reduce the term of his or her service⁹.

A person who has attained the age of 18 may be enlisted for local service, which is full-time service in the regular army where the person enlisted restricts his service to a particular area in the United Kingdom ('area of service')¹⁰. Before being enlisted for local service, a person is required to give the recruiting officer¹¹ enlisting him, notice in writing specifying the area in the United Kingdom to which his service is to be restricted¹². The enlisted person may volunteer to serve outside his area of service in the United Kingdom but, otherwise, he can only be required to do so for a total of no more than 30 days in any year or in any part of a year during which his term of service has effect¹³. An enlisted person may apply to the competent military authority to alter his area of service, by notice in writing specifying the area in the United Kingdom to which his service would be restricted if his application were approved¹⁴. The competent military authority may signify approval in writing, and the person's area of service will be that specified in the notice as from such date as is specified in the notice of approval¹⁵.

The length of the term of a person enlisted for local service is three years beginning with the date of his attestation¹⁶. A person enlisted for local service may apply to the competent military authority to extend his term by a period of three years, or if he will attain the age of 55 years before the expiry of such a period, until the date on which he attains that age, and, if the competent military authority signifies its approval in writing, he must be treated as if he had enlisted for such an extended term¹⁷. A person may apply to extend his term whether or not it has already been extended under this provision¹⁸.

These provisions are not applicable to enlistment into the Royal Marines¹⁹.

1 Terms of service are governed by the Army Terms of Service Regulations 1992, SI 1992/1365: see regs 2(1), 3, 4, 14; and see para 14 ante. The regulations apply the terms of enlistment equally to women. For provisions relating to part-time service in Northern Ireland, see the Army Terms of Service (Part-time Service in Northern Ireland) Regulations 1992, SI 1992/1366, regs 3, 4.

2 Army Terms of Service Regulations 1992, SI 1992/1365, reg 3(1). As to attestation see para 197 ante.

3 Ibid reg 3(2). The date referred to in the text is 'the relevant date': reg 2(3). In addition, a person aged over 16, but under 19 years 7 months enlisting in the regular army otherwise than for home service, may be enlisted for a special term of service which is a term: (1) of full-time service; (2) expiring either 12 months or 2 years from the date he first reports for duty following his enlistment; (3) to which the provisions contained in regs 5-9 (see para 200 post) do not apply: reg 4(1), (2). Such a person may determine his service at any time by a notice in writing given to his commanding officer not less than 14 days before the date on which it is to

take effect (reg 4(3)), but this does not apply to any term of service extended under reg 14 (as to which see text and note 8 infra) (reg 4(4)).

4 See *ibid* reg 2(3). Those for whom the relevant date, instead of being the date of their attestation, is that of their eighteenth birthday, are those who enlisted before their eighteenth birthday: reg 2(3)(b). Thus persons within any of these categories, enlisting before they reach the age of 18, commence their engagements, and are therefore subject to military law, on the date of their attestation, but time does not begin to run towards the expiration of their term of service until they reach their eighteenth birthday.

5 le a term as provided for in *ibid* regs 4, 4B (as added): reg 3(2).

6 *Ibid* reg 3(3).

7 'Competent military authority' in this context means the Director General, Army Personnel Centre: *ibid* reg 16(1), Schedule (amended by SI 1996/2973).

8 Army Terms of Service Regulations 1992, SI 1992/1365, reg 14(1). The extended term must be a term of a duration provided for in the regulations and its duration must be specified in the notice: reg 14(1). A person who has thus been treated as having enlisted for a longer term than that for which he was previously enlisted is not permitted to exercise his right to transfer to the reserve or to determine army service (see para 200 post) so as to reduce his army service to less than it would have been if he had not been so treated: reg 14(2). A person whose term of service has not been extended under reg 14 or under the Army Terms of Service Regulations 1986, SI 1986/2072, reg 13 (revoked) may apply in writing to his commanding officer to continue in army service after completion of his term of service until the expiration of two years from the date he first reported for duty following his enlistment; and if the competent military authority signifies in writing its approval of such application he may after completion of his term of service be continued as a person in army service for such period in all respects as if his term of service were still unexpired: Army Terms of Service Regulations 1992, SI 1992/1365, reg 4(5), (6).

9 Armed Forces Act 1966 s 2(1)(f) (amended by the Armed Forces Act 1976 s 2). At the date at which this volume states the law no such regulations had been made, but cf the terms of service in the Royal Air Force (see para 210 text and note 7 post). As to the Defence Council see para 2 ante.

10 Army Terms of Service Regulations 1992, SI 1992/1365, reg 4A(1), (2) (reg 4A added by SI 1996/2973). The Army Terms of Service Regulations 1992, SI 1992/1365, regs 5-9, 14, 15 do not apply to a person enlisted for local service: reg 4A(8) (as so added).

11 'Recruiting officer' is to be construed in accordance with the Army Act 1955 s 1 (see para 209 note 4 post): Army Terms of Service Regulations 1992, SI 1992/1365, reg 4A(9) (as added: see note 10 supra).

12 *Ibid* reg 4A(3) (as added: see note 10 supra). Subject to reg 4A(7) (as added), the area of service of any person enlisted for local service will be the area specified in the notice: reg 4A(4) (as so added).

13 *Ibid* reg 4A(5) (as added: see note 10 supra). 'Year' means the period of 12 months beginning on 1 January: reg 4A(9) (as so added).

14 *Ibid* reg 4A(6) (as added: see note 10 supra).

15 *Ibid* reg 4A(7) (as added: see note 10 supra).

16 *Ibid* reg 4B(1) (reg 4B added by SI 1996/2973).

17 Army Terms of Service Regulations 1992, SI 1992/1365, reg 4B(2) (as added: see note 16 supra).

18 *Ibid* reg 4B(3) (as added: see note 16 supra).

19 *Ibid* reg 2(2). As to the terms of enlistment and service in the Royal Marines see para 182 et seq ante.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2)

Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

198 Terms of enlistment; extension or reduction of period of service

TEXT AND NOTES--SI 1992/1365 replaced by the Army Terms of Service Regulations 2007, SI 2007/3382 (amended by SI 2009/1089).

NOTE 1--SI 1992/1366 revoked: SI 2008/1849.

TEXT AND NOTE 9--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/199. Forfeiture of service.

199. Forfeiture of service.

If a soldier of the regular forces¹ confesses to desertion and a direction relieving him from trial by court-martial or from being dealt with summarily for the offence is made by or on behalf of the Defence Council², or if such a soldier is convicted by court-martial of desertion, he forfeits that part of his service forming the period of desertion³. He is then liable to serve⁴ for a period determined as if the date of his attestation had been a date earlier than the date of the direction, or of his conviction, by the length of his previous service not forfeited⁵.

1 As to the meaning of 'soldier' see para 193 note 2 ante. For the meaning of 'regular forces' see para 191 ante.

2 Ie under the Army Act 1955 s 81(2): see para 374 post. As to the Defence Council see para 2 ante.

3 Ibid ss 17(1), 81(1), (2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). These provisions apply to warrant officers, non-commissioned officers and marines of the Royal Marines and the Royal Marines Reserve, and to the equivalent ranks of the Royal Fleet Reserve who have served in the Royal Marines: see the Army Act 1955 s 210(1), (2)(b) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 3); the Navy, Army and Air Force Reserves Act 1959 s 2, Schedule (repealed); and the Armed Forces Act 1981 s 4. As to desertion see para 404 post. As to the summary procedure see para 353 et seq post; and as to courts-martial see para 480 et seq post.

4 He will serve for the like term (both as respects duration and as respects liability to army service and any liability to serve in the reserve) as that for which he was in fact serving at the date of the direction or of his conviction: Army Act 1955 ss 17(2), 81(4)(b).

5 Ibid ss 17(2), (3), 81(1), (4)(b) (amended by the Armed Forces Act 1971 s 43, Sch 1 para 1(2); and the Armed Forces Act 1976 s 22(6), Sch 10). A soldier, however, who at the date of the direction or of his conviction was serving a term which dated from his eighteenth birthday and had attained that age on the date of the direction or of his conviction is only liable to serve for such period beyond that birthday as the original enlistment required: Army Act 1955 s 17(2) proviso. Nothing in s 17 (and consequently nothing in s 81(2)) applies to a person who deserts when he is continued in service after the completion of 22 years' service (see para 202 post): see s 17(7). Forfeited service may be restored (ss 17(5), 81(4)) and is then credited to the soldier in determining the amount of service which he has served, or is liable to serve, in the army or the reserve, as the case may be, but where he is then or subsequently entitled to the right to determine his full-time service or to transfer to the reserve (see para 200 post) the restoration cannot operate to enable him to alter the date on which, by reason of his forfeiture of service, his army service can be determined in the exercise of that right, ie he cannot take advantage of the fact that he has previously forfeited service to terminate his service at an earlier date than he would otherwise be entitled to do: s 17(6).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve

Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

199 Forfeiture of service

NOTE 3--Armed Forces Act 1981 s 4 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/200. Transfer to the reserve and determination of service.

200. Transfer to the reserve and determination of service.

A person other than a person enlisted for home service or continued in service¹ who has enlisted for a term of 22 years in the regular army has the right to transfer to the reserve at the end of the notice period or any time thereafter². The notice period is four years³. The notice period begins: (1) in the case of a person who enlisted under the age of 17 years 6 months, on the date he attains the age of 18; (2) in the case of a person who enlisted before 1 January 1991 having attained the age of 17 years 6 months, on the date he became 18; (3) in the case of a person who enlisted after 1 January 1991 having attained the age of 17 years 6 months, on the date he became 18 or three months after the date of his attestation, whichever is the later⁴. In addition, a person in army service other than a person enlisted for home service⁵ whose application to his commanding officer for transfer to the reserve is approved by the competent military authority⁶ may be transferred to the reserve⁷.

A recruit⁸ has the right to determine his service by giving not less than 14 days' notice in writing to his commanding officer, subject to certain provisions⁹.

A person enlisted for home service has the right to determine his service at the end of the notice period¹⁰ or any time thereafter¹¹. Such a right must be exercised by notice in writing given by the person in question to his commanding officer not less than 12 months before the date on which he wishes to determine his service, and his service will determine on that date¹². A person enlisted for home service may also apply to his commanding officer to determine his service, and if that application is approved by the competent military authority, his service will determine on the date specified in the application¹³.

A person enlisted for local service has the right to determine his service by giving notice in writing to his commanding officer that he wishes to do so on a date specified in the notice, and his service is determined on that date accordingly¹⁴. The period of notice to be given by a person enlisted for local service is to be not less than 90 days ending on the date specified in the notice as the date on which he wishes to determine his service¹⁵. Where a person on being enlisted for local service is required to undertake a course of initial military training lasting for a period of not less than ten weeks, the period of notice may not end on a date earlier than two years after the date of attestation¹⁶; in other cases, the period of notice may not end on a date earlier than one year after the date of attestation¹⁷.

A person transferred to the reserve in consequence of the exercise of a right under the regulations¹⁸ will serve in the reserve for a period beginning on the date of his transfer and ending either six years later or 22 years after the relevant date¹⁹, whichever is the sooner, or for such shorter period as the competent military authority may approve²⁰.

1 le continued in service under the Army Terms of Service Regulations 1992, SI 1992/1365, reg 15: see para 202 post. For provisions relating to part-time service in Northern Ireland see the Army Terms of Service (Part-time Service in Northern Ireland) Regulations 1992, SI 1992/1366, reg 5.

2 Army Terms of Service Regulations 1992, SI 1992/1365, reg 5(1). The right in reg 5(1) must be exercised by notice in writing given by the person in question to his commanding officer not less than 12 months before the date when he is to be transferred to the reserve: reg 5(5). For a restriction on the exercise of a right under reg 5(1) see reg 10A(4) (as added); and the text and note 17 infra.

3 Ibid reg 5(2), (3) (reg 5(3) substituted by SI 1999/2764).

4 Army Terms of Service Regulations 1992, SI 1992/1365, reg 5(4).

5 As to enlistment for home service see para 198 ante.

6 The 'competent military authority' in this instance is: (1) on payment, the person's commanding officer or, in cases involving the remission of purchase costs, the General Officer Commanding; and (2) in any other case, the Director of Manning (Army): Army Terms of Service Regulations 1992, SI 1992/1365, reg 16, Schedule.

7 Ibid reg 6.

8 'Recruit' means: (1) a person enlisted in the regular army who has not previously so enlisted, otherwise than for part-time service; or (2) a person who has been discharged by a competent military authority in accordance with regulations made under the Army Act 1955 Pt I (ss 1-23) (as amended) as not finally approved for service and who has subsequently been re-enlisted in the regular army: Army Terms of Service Regulations 1992, SI 1992/1365, reg 2(3).

9 Ibid reg 7(1) (substituted by SI 1999/1610; and renumbered by SI 1999/2764). If the recruit had not attained the age of 18 years at the date of his attestation, the notice does not have effect unless it is given after the recruit has completed 28 days' service and before the expiration of the period of six months beginning on the date he first reported for duty following his enlistment: Army Terms of Service Regulations 1992, SI 1992/1365, reg 7(2). If the recruit had attained the age of 18 years at the date of his attestation, the notice does not have effect unless it is given after the recruit has completed 28 days' service and before the expiration of the period of three months beginning on the date he first reported for duty following his enlistment: reg 7(3). If such notice expires at a time when soldiers are required by an order under the Army Act 1955 s 10 to continue in army service (see para 203 post), that recruit's service will not determine for so long as that order remains in force: Army Terms of Service Regulations 1992, SI 1992/1365, reg 7(4). In calculating any period of time referred to in reg 7, no account is to be taken of any day during which the recruit was absent on leave either for the whole or part of the day: reg 7(5). Regulation 7 does not apply to a recruit enlisted in the Brigade of Gurkhas: reg 7(6). As to the right of such recruits to determine service see reg 9.

10 The notice period for the purpose of ibid reg 10(1) is four years and begins on the date when a person attains the age of 18, or three months after the date of his attestation, whichever is the later: reg 10(2) (amended by SI 1999/2764).

11 Army Terms of Service Regulations 1992, SI 1992/1365, reg 10(1). A person who, in consideration of: (1) being permitted to undergo a course of instruction of a duration of not less than two weeks; (2) being permitted to transfer to a corps different to the one in which he was previously serving; or (3) being permitted to receive any other benefit or advantage, consents in writing to being restricted in the exercise of any right conferred by regs 5(1), 10(1), 10A(1) (as added) or reg 15(6), does not have the right to be transferred to the reserve or determine his service pursuant to those regulations before the expiration of the appropriate period, which must be specified in such consent and must begin with the date on which he completes such course of instruction or such transfer takes effect or such other date as is specified in such consent: reg 11(1) (amended by SI 1996/2973). Any consent given under the Army Terms of Service Regulations 1992, SI 1992/1365, reg 11(1) (as amended) by a person at a time when he had not attained the age of 17 years 6 months may be revoked by notice in writing given by that person to his commanding officer not more than 28 days after he attains the age of 18: reg 11(3). A person who has given his consent under reg 11(1) (as amended) may, if the competent military authority approves in writing, revoke that consent: reg 11(4). The competent military authority in this instance is the Director General Army Personnel Centre: reg 16, Schedule. As to the meaning of 'appropriate period' see reg 11(2).

12 Ibid reg 10(3).

13 Ibid reg 10(4) (amended by SI 1999/1610; SI 1999/2764). As to the competent military authority see note 6 supra.

14 Army Terms of Service Regulations 1992, SI 1992/1365, reg 10A(1) (reg 10A added by SI 1996/2973). As to local service see para 198 ante.

15 Army Terms of Service Regulations 1992, SI 1992/1365, reg 10A(2) (as added: see note 14 supra).

16 Ibid reg 10A(3) (as added: see note 14 supra).

17 Ibid reg 10A(4) (as added: see note 14 supra).

18 Ie under ibid reg 5 or reg 6.

19 As to the relevant date see para 198 note 3 ante.

20 Army Terms of Service Regulations 1992, SI 1992/1365, reg 12.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

200 Transfer to the reserve and determination of service

TEXT AND NOTES--SI 1992/1365 replaced: Army Terms of Service Regulations 2007, SI 2007/3382 (amended by SI 2009/1089).

NOTE 1--SI 1992/1366 revoked: SI 2008/1849.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/201. Re-entry into army service.

201. Re-entry into army service.

A person serving in the reserve by virtue of the Army Terms of Service Regulations 1992 or any previous enactment¹, or by virtue of having been enlisted for a period partly of army service and partly of service in the reserve², may at any time re-enter army service if the competent military authority approves an application made by him in that behalf³. He may then either: (1) be treated as if he had not been serving in the reserve and as if his army service had continued while he was serving in the reserve⁴; or (2) serve in army service for the remainder of the period for which he would have been liable to serve in the reserve if he had not re-entered on army service⁵; or (3) serve in army service for a specified part of that remainder, and thereafter serve in the reserve for the residue of that remainder⁶.

1 The rights conferred by the Army Terms of Service Regulations 1992, SI 1992/1365 (as amended) (including rights exercisable only with the approval or consent of the competent military authority: see paras 200 ante, 202 post), or by a previous enactment or regulations: reg 13.

2 See para 198 text and note 5 ante.

3 Army Terms of Service Regulations 1992, SI 1992/1365, reg 13. 'Competent military authority', in this context, means the Director General Army Personnel Centre: reg 16, Schedule (amended by SI 1996/2973).

4 Army Terms of Service Regulations 1992, SI 1992/1365, reg 13(a). It is submitted that the effect of this provision is that the time which the re-entrant has spent in the reserve will count towards the period of army service for which he originally enlisted.

5 Ibid reg 13(b).

6 Ibid reg 13(c).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

201 Re-entry into army service

TEXT AND NOTES--SI 1992/1365 replaced: Army Terms of Service Regulations 2007, SI 2007/3382 (amended by SI 2009/1089).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/202. Continuance in service after completion of the term of service.

202. Continuance in service after completion of the term of service.

A person in army service¹ enlisted on an enlistment for 22 years who has completed 18 years' continuous service from the relevant date² may apply in writing³ to his commanding officer to continue in army service after the completion of his term of service for a further period specified in the notice but not exceeding five years⁴. If this is approved in writing by the competent military authority⁵, the person in question, after the completion of his term of service, may continue as a person in army service for the period specified in the application in all respects as if his term of service were still unexpired⁶.

A person in army service who will at the end of the term for which he enlisted have completed 22 years' service, but who would not be entitled to give a notice under the preceding provision⁷, may at any time during the last 12 months of that term apply in writing to his commanding officer to continue in army service at the end of that term for a further period specified in the notice but not exceeding five years. If this is approved⁸, he may at the end of that term continue as a soldier of the regular forces for the period so specified, in all respects as if that term were still unexpired⁹.

A person in army service who continues in service under these provisions¹⁰ may, within the relevant period¹¹, apply in writing to his commanding officer to continue further in army service after the date on which the period for which he was last continued will end, for such period not exceeding five years as may be specified in the application¹². If this is approved¹³, he may after that date further continue as a person in army service for the period so specified, in all respects as if the term for which he previously continued in service were still unexpired¹⁴.

1 Although the Royal Marines are a separate corps of the regular forces (see the Army Act 1955 s 210(1); and para 8 ante), these provisions do not apply to persons enlisted in the Royal Marines: see the Army Terms of Service Regulations 1992, SI 1992/1365, reg 2(3). See further para 183 ante.

2 Subject to certain exceptions, the relevant date is the date of attestation: see *ibid* reg 2(3). For the exceptions see para 198 note 4 ante.

3 As to the giving of notices see para 200 ante. A person continued in service under *ibid* reg 15(1), (3) or (4) or under the Army Terms of Service Regulations 1986, SI 1986/2072, reg 14(1), (3), (4) (revoked) has the right to determine his service by a notice in writing given to his commanding officer not less than six months before the date on which it is to have effect: Army Terms of Service Regulations 1992, SI 1992/1365, reg 15(6). This is subject to the restriction set out in reg 11 (see para 200 ante): reg 15(7).

4 *Ibid* reg 15(1).

5 'Competent military authority', in this context, means the Director General Army Personnel Centre: reg 16, Schedule (amended by SI 1996/2973).

6 Army Terms of Service Regulations 1992, SI 1992/1365, reg 15(1). References in reg 15 to periods of service include references to periods served in the reserve, but are not to be construed as including, in relation to a person enlisted for a term ending with the expiration of a period beginning with the date of his attaining the age of 18, any period during which he was under that age: reg 15(10). A soldier whose term has been extended under reg 14(1) to one of 22 years (see para 198 ante) is treated as a person who had originally enlisted for that term, and therefore has the right conferred by reg 15(1). The giving of a notice pursuant to reg 15(1) does not prejudice the soldier in the exercise of any right conferred by reg 5 or reg 10 (see para 200 ante): reg 15(2).

7 Eg because his service has not been continuous.

8 le approved in writing by the competent military authority: see note 5 supra.

9 Army Terms of Service Regulations 1992, SI 1992/1365, reg 15(3). References to the term for which a soldier enlisted are to be taken, where a soldier's term has been extended under reg 14(1) (see para 198 text and note 8 ante), as references to the term as so extended: reg 15(9). As to such a soldier's rights to claim discharge see note 6 supra.

10 le those of *ibid* reg 15(1) or (3).

11 'Relevant period' means: (1) where the period for which the person was last continued in service was one of two years or more, a period of two years; or (2) where the period was less than two years, the whole of the period, and in each case the relevant period ends on the date the period for which he is continued ends: *ibid* reg 15(8).

12 *Ibid* reg 15(4). Regulation 15(4) is applicable to soldiers whose service is further extended under it as it is to those whose service is extended under reg 15(1) or (3): reg 15(5).

13 le approved in writing by the competent military authority: see note 5 supra.

14 Army Terms of Service Regulations 1992, SI 1992/1365, reg 15(4).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

202 Continuance in service after completion of the term of service

TEXT AND NOTES--SI 1992/1365 replaced: Army Terms of Service Regulations 2007, SI 2007/3382 (amended by SI 2009/1089).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/203. Postponement of discharge or transfer to reserve.

203. Postponement of discharge or transfer to reserve.

If, at the time at which a soldier¹ of the regular forces² would be entitled to be discharged or transferred to the reserve³, a call out order is in force⁴ authorising the call out for permanent service of members of the reserve⁵, or he is serving outside the United Kingdom, he may be retained in army service for such period as the competent military authority may order⁶, and his service may be prolonged accordingly⁷. He is, however, entitled during that period to be discharged or transferred to the reserve, as the case requires, if it appears to that authority that his services can be dispensed with⁸.

Where at the time at which under these provisions a soldier is entitled to be discharged or transferred to the reserve a state of war exists between Her Majesty and any foreign power⁹, he may by declaration before his commanding officer agree to continue in army service while the state of war exists¹⁰.

In the case of imminent national danger or of great emergency Her Majesty may by order provide¹¹ that soldiers who would otherwise fall to be transferred to the reserve must continue in army service¹².

A soldier of the regular forces is not entitled to be discharged or transferred to the reserve at a time when he is liable to be proceeded against for an offence under the Army Act 1955, or the corresponding Acts¹³ relating to the Royal Navy and the Royal Air Force¹⁴, or if he is outside the United Kingdom and is serving a sentence of imprisonment or detention awarded by a court-martial under any of those Acts¹⁵.

1 For the meaning of 'soldier' see para 193 note 2 ante.

2 For the meaning of 'regular forces' see para 191 ante. The provisions described in this paragraph do not apply to members of the Royal Marines: see *ibid* s 210(4), Sch 7 para 1 (amended by the Armed Forces Act 1966 s 13(1), Sch 3 para 3; and the Reserve Forces Act 1996 s 131(1), Sch 10 para 5). As to the Royal Marines see para 182 et seq ante.

3 I.e. the 'relevant date': Army Act 1955 s 9(1) (substituted by the Reserve Forces Act 1996 s 126, Sch 7 para 1(2)). In relation to soldiers serving outside the United Kingdom, references in this context to being entitled to be transferred to the reserve must be construed as references to being entitled to be sent to the United Kingdom with all convenient speed for the purpose of transfer to the reserve: Army Act 1955 s 9(7). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

4 I.e. under the Reserve Forces Act 1996 s 52, s 54 or s 46 (see para 232 post): Army Act 1955 s 9(1).

5 As to references to the reserve being called out on permanent service see note 7 infra; and paras 131 note 4 ante, 232 post.

6 Army Act 1955 s 9(1A) (s 9(1A)-(1C) added by the Reserve Forces Act 1996 Sch 7 para 1(2)). For the meaning of 'competent military authority' see para 195 note 4 ante. The period for which a soldier may be retained in service after the relevant date by virtue of these provisions is limited as follows: (1) a soldier who would otherwise have fallen to be transferred to the reserve may not be retained for longer than the period for which, if the assumptions mentioned in the Army Act 1955 s 9(1C) (as added) (see *infra*) are made in relation to him, he could have been required to serve on being called out under the Reserve Forces Act 1996 Pt VI (ss 50-64); or (2) a soldier who would otherwise have been discharged may not be retained for longer than 12 months: Army Act 1955 s 9(1B) (as so added). A soldier who is retained in service is (if not transferred or discharged sooner) entitled to be transferred to the reserve or discharged, as the case may require, at the end of whichever of the above periods applies to him: s 9(1B) (as so added). The assumptions to be made in relation to a soldier for the purposes of s 9(1B) (see head (1) *supra*) are that: (a) he was transferred to the reserve in time to be called out for permanent service starting on the relevant date; and (b) he was so called out on the

authority of the call out order which justified his retention in service: s 9(1C) (as so added). As to the power to call out reservists see para 232 et seq post.

7 Ibid s 9(1A) (as added: see note 6 supra). Notwithstanding s 225(2), when the liability of a soldier enlisted on or after 1 April 1967 to be retained in any service beyond the time at which he would normally be entitled to be discharged or transferred to the reserve depends on men of the army reserve being called out on permanent service, or where a man has agreed that these provisions are to apply to him, he may be so retained whether the call out of reservists occurs under the Reserve Forces Act 1980 s 10 (ie call out on account of a great emergency or the imminence of national danger), under s 11 (call out on account of warlike operations), or under Sch 8 para 16(1)-(3) (call out for permanent overseas service): s 83(1), (2) (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11).

8 Army Act 1955 s 9(5).

9 The Republic of Ireland is not a foreign power for the purposes of the Army Act 1955: Armed Forces Act 1966 s 19.

10 Army Act 1955 s 9(6). In these circumstances, if the competent military authority approves, the soldier may continue in army service so long as the state of war exists: see s 9(6). If it is so specified in the declaration, the soldier is entitled to be discharged or transferred to the reserve at the expiration of three months' notice given by him to his commanding officer: s 9(6) proviso. Where a soldier is retained in service by virtue of s 9 (as amended) but would otherwise have fallen to be transferred to the reserve, any period for which he is liable to serve in the reserve after the completion of his army service is to be reduced by the period for which he is so retained; and the period for which he is so retained is to be treated as a period of relevant service for the purposes of any provision of the Reserve Forces Act 1996 Pt IV (ss 28-37), Pt V (ss 38-49), Pt VI (ss 50-64) or Pt VII (ss 65-77): Army Act 1955 s 9(6A) (added by the Reserve Forces Act 1996 Sch 7 para 1(3)).

11 The order is required to be signified under the hand of the Secretary of State and must forthwith be communicated to Parliament: Army Act 1955 s 10(1), (2) (s 10 substituted by the Armed Forces Act 1966 s 12). Such an order may be revoked by order of Her Majesty signified in the same way: Army Act 1955 s 10(3) (as so substituted). As to the Secretary of State see para 2 ante.

12 Ibid s 10(1) (as substituted: see note 11 supra). Thereupon the provisions of s 9 (as amended) apply to such soldiers as they apply while a call out order under the Reserve Forces Act 1996 s 52 authorising the call out of members of the reserve is in force: Army Act 1955 s 10(1) (as so substituted; and amended by the Reserve Forces Act 1996 Sch 7 para 1(4)). See also note 7 supra.

13 Ie the Naval Discipline Act 1957 and the Air Force Act 1955.

14 Army Act 1955 s 13(1). Section 13(1) does not, however, apply if it is determined that the offence is not to be tried by court-martial: s 13(1) proviso. As to the meaning of 'liable to be proceeded against for an offence' see *R v Garth* [1986] AC 268, HL (offence against the Air Force Act 1955).

15 Army Act 1955 s 13(2).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/204. Procedure on entitlement to discharge or transfer to reserve.

204. Procedure on entitlement to discharge or transfer to reserve.

Every soldier of the regular forces¹ on becoming entitled to be discharged² must be discharged with all convenient speed, and on falling to be transferred to the reserve³ must be so transferred, but until discharged or transferred he remains subject to military law⁴.

A soldier may be discharged only by order of the competent military authority⁵, by authority direct from Her Majesty, or in pursuance of a sentence of a court-martial⁶. In any case the discharge must be carried out in accordance with Queen's Regulations⁷, and every soldier must on discharge be given a certificate of discharge⁸. If a soldier who enlisted in the United Kingdom⁹ is serving outside the United Kingdom when entitled to be discharged, he must, if he requires to be discharged in the United Kingdom, be sent there free of cost with all convenient speed and discharged on arrival, or within six months from his arrival if he consents to the delay¹⁰. If, however, at his request, he is discharged at the place where he is serving, he has no claim to be sent to the United Kingdom or anywhere else¹¹. A warrant officer who is reduced to the ranks is entitled to claim to be discharged unless a state of war exists or a call out order is in force¹² authorising the call out for permanent service of members of the reserve¹³.

1 For the meaning of 'regular forces' see para 191 ante. With the exception of the provision as to the right to discharge of warrant officers reduced to the ranks (see the text and notes 12-13 infra), the provisions described in this paragraph do not apply to personnel of the Royal Marines, who are governed by the Army Act 1955 s 210(4), Sch 7 para 5 (as amended) (see para 184 ante): Sch 7 para 1 (amended by the Armed Forces Act 1966 s 13(1), Sch 3 para 3).

2 As to entitlement to discharge see para 200 ante.

3 As to the right to be transferred to the reserve see para 200 ante.

4 Army Act 1955 ss 11(1), 12(1). As to the jurisdiction to try by court-martial a soldier who has completed his term of army service but has not been transferred to the reserve at the time of his arrest or trial see *R v Hadfield* [1954] 2 All ER 765, [1954] 1 WLR 1128, C-MAC.

5 For the meaning of 'competent military authority' see para 195 note 4 ante.

6 Army Act 1955 s 11(3).

7 Ibid s 11(3). See further the Queen's Regulations for the Army 1975 paras 9.290-9.361, 9.379-9.414.

8 Army Act 1955 s 11(4). The certificate must contain the following particulars: (1) his name, rank and service number; (2) his reserve liability (if applicable); (3) the reason for his discharge and the date of discharge; (4) any other particulars which are required to be included in the certificate by directions of the Defence Council or an officer authorised by them: s 11(4) (amended by the Armed Forces Act 1996 s 3(1)). It is an offence to personate the holder of a certificate of discharge: see para 41 ante. As to the Defence Council see para 2 ante.

9 A soldier who enlisted outside the United Kingdom has no statutory right to be sent there to be discharged. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

10 Army Act 1955 s 11(2)(a). Similar provisions apply where a soldier falls to be transferred to the reserve while serving outside the United Kingdom: s 12(2). A soldier discharged or transferred to the reserve in the United Kingdom is entitled to be conveyed free of cost from the place of his discharge or transfer to the place stated in his attestation paper to be the place where he attested, or to any other place at which he intends to reside and to which he can be conveyed at no greater cost: ss 11(5), 12(3).

11 Ibid s 11(2)(b). Similarly, a soldier serving outside the United Kingdom when he falls to be transferred to the reserve may at his own request be so transferred without being required to return to the United Kingdom (s 12(3) proviso), but there is no statutory provision enabling him then to claim to be sent to the United Kingdom or elsewhere.

12 Ie under the Reserve Forces Act 1996 s 52: see para 232 post.

13 Army Act 1955 s 15 (amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9(3)). The reduction may be by sentence of a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, or by order of the Defence Council or of an officer authorised by it for this purpose: see the Army Act 1955 s 201(1) (amended by the Army and Air Force Act 1961 s 37(1), (2); the Armed Forces Act 1971 s 68; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to call out for permanent service see para 232 et seq post.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/(i) The Regular Forces (Army)/205. Attachment of regular forces to naval or air forces.

205. Attachment of regular forces to naval or air forces.

Any officers or men of the regular forces may be attached temporarily to any of Her Majesty's naval or air forces¹, and regulations made by the Defence Council² may prescribe the circumstances in which these officers and men are to be deemed to be so attached³. In so far as powers of command⁴ depend on rank, a member of Her Majesty's naval or air forces who is acting with, or is a member of a body of any of those forces which is acting with, any body of the regular forces has powers equivalent to those of a member of the regular forces of corresponding rank⁵.

1 Army Act 1955 s 179(1). For the meaning of 'regular forces' see para 191 ante. A person does not cease to be subject to military law (see para 307 post) by reason only of such attachment: s 179(4). However, he becomes subject to the Naval Discipline Act 1957 (see s 113(1)), or to air force law (see the Air Force Act 1955 s 208), as the case may be, with modifications. For the modifications see the Naval Discipline Act 1957 s 113(2), Sch 2 (as amended); the Air Force Act 1955 s 208, Sch 6 (as amended); and para 309 post.

2 Defence Council regulations are not statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

3 Army Act 1955 s 179(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

4 As to Her Majesty's power to make regulations as to the vesting of command over her military forces, or any part or member of them, see the Army Act 1955 s 177; and para 2 ante. Note that s 177(3) saves Her Majesty's prerogative powers.

5 Ibid s 178. For the purposes of ss 33, 74 (which relate, respectively, to offences involving insubordination and to powers of arrest: see paras 336, 400 post), any such member of the naval or air forces must be treated as if he were a member of the regular forces of corresponding rank: s 178. The corresponding ranks of the three armed services, solely for purposes of command, are prescribed by the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para J.0381, Table 3-1; the Queen's Regulations for the Army 1975 para J2.042; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 4 para J126, Table A.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

205 Attachment of regular forces to naval or air forces

TEXT AND NOTES--An officer, warrant officer or non-commissioned officer of a regular or reserve force who is subject to service law ('A') has, over members of any other such force who are of inferior rank or rate to A, such powers of command as are dependent on rank or rate: Armed Forces Act 2006 s 354. For the meaning of 'subject to service law' see PARA 303-313.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/206. Composition of the regular air force.

(ii) The Regular Air Force

206. Composition of the regular air force.

The regular air force stands in relation to the Royal Air Force as the regular forces to the army, and its composition therefore corresponds to that of the regular forces¹. 'Regular air force' means all of Her Majesty's air forces other than the Air Force Reserve² (corresponding to the Army Reserve), the Royal Auxiliary Air Force³ (corresponding to the Territorial Army) and air forces raised under the law of a colony⁴. Officers of any reserve of officers are to be treated as members of the regular air force only when undergoing training, or when serving with a body of the regular air force or with a body of the Air Force Reserve called out on permanent service⁵, and officers who have retired⁶ are to be so treated when they are for the time being subject to air force law⁷. Officers of the Royal Auxiliary Air Force are likewise to be so treated for some purposes in circumstances equivalent to those in which their counterparts in the Territorial Army are to be treated as members of the regular forces⁸. Warrant officers, non-commissioned officers and men of the Air Force Reserve and the Royal Auxiliary Air Force are to be treated as members of the regular air force while subject to air force law⁹.

1 As to the meaning of 'regular forces' see para 191 ante.

2 As to reserve forces see para 223 et seq post.

3 As to auxiliary forces see para 223 et seq post.

4 See the Air Force Act 1955 s 223(1). As to the meaning of 'colony' see para 20 note 4 ante. The Air Force Act 1955 applies to women members of the regular air force as to men, subject to the modifications imposed by s 211(a), (c). See also para 18 ante. It seems that the term 'Royal Air Force' has no statutory basis.

5 See the Air Force Act 1955 s 210(1)(a) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 11).

6 I.e. within the meaning of any order made under the Air Force (Constitution) Act 1917 s 2: Air Force Act 1955 s 210(1)(b).

7 Ibid s 210(1)(b). As to officers of any army reserve of officers who are to be treated as members of the regular forces while subject to military law, and retired officers who are to be so treated while they are for the time being subject to military law see para 191 ante. For the times when such officers, and the air force counterparts of army officers who have retired, are subject to military or air force law, as the case may be see para 247 post.

8 See the Air Force Act 1955 s 210(1)(c) (substituted by the Reserve Forces Act 1996 Sch 10 para 11). For the equivalent provisions relating to the Territorial Army see the Army Act 1955 s 211(1)(b); and para 191 text and note 13 ante.

9 Air Force Act 1955 s 210(1)(d). As to who is subject to air force law see s 205(1); and para 308 post.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the

Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/207. Constituent elements of the regular air force.

207. Constituent elements of the regular air force.

The regular air force has several officer branches which form the basis for officer appointment¹. An airman is, upon attestation, mustered to a trade group² which may not be altered save as provided by the Queen's Regulations³.

A 'unit', which is the basis for administration and discipline, simply means personnel and equipment grouped together under one commander and borne on a separate establishment⁴.

1 See the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 4 para 117, Ch 8 para 301. For the meaning of 'regular air force' see para 206 ante.

2 See ibid Ch 10 para 490. Airmen already serving in ground trades may apply for aircrew training and service: see Ch 10 para 519.

3 See ibid Ch 10 paras 518-537. A recruit must on enlistment declare his willingness to transfer to another trade within his trade group if found unsuitable for the trade for which he was accepted: Ch 10 para 493. As to the circumstances in which a transfer of ground trades within a trade group may be made see Ch 10 para 527. As to the remustering of airmen (aircrew) to ground trades, and conditions of retention in the service of airmen (aircrew) suspended or prematurely withdrawn from flying duties see Ch 10 paras 526, 526A.

4 See ibid Ch 1 para 15 App 51, Explanation of Terms.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/208. Relationship between the Crown and enlisted persons.

208. Relationship between the Crown and enlisted persons.

The relationship between the Crown and a person enlisting in air force service is identical with that existing between the Crown and a person enlisting in its military service¹. The Royal Air Force, like the army, is dependent for its existence upon statute².

¹ As to this relationship see para 194 ante.

² The authority for the existence of the Royal Air Force is the Air Force (Constitution) Act 1917. The Air Force Act 1955, renewed from time to time, provides for enlistment, to some extent for conditions of service, and for discipline in the regular air force; and the Reserve Forces Act 1980 and the Reserve Forces Act 1996 authorise the existence of the Air Force Reserve and the Royal Auxiliary Air Force, prescribe their responsibilities, and provide for their discipline. See also paras 3, 15 ante; and para 232 et seq post. For the meaning of 'regular air force' see para 206 ante.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/209. Enlistment, eligibility and procedure.

209. Enlistment, eligibility and procedure.

As in the regular forces, recruits in the regular air force must be enlisted for general service¹. The service of aliens in the regular air force is governed by statutory provisions equivalent to those which apply to the regular forces². All recruits must satisfy the medical standards laid down by the Ministry of Defence³. The procedure of enlistment by authorised recruiting officers⁴ and the provisions relating to age limit of recruits and necessary consents are identical with the provisions applicable to the regular forces⁵.

1 Air Force Act 1955 s 3 (substituted by the Armed Forces Act 1996 s 35(1), Sch 6 para 3). For the meaning of 'regular forces' see para 191 ante. For the meaning of 'regular air force' see para 206 ante. Unlike the case of the regular forces (see the Army Act 1955 s 3(2); and para 195 ante), there are no provisions necessitating the appointment of persons enlisting to a particular corps at any time nor is there any right in any person to service in any particular corps. 'Corps' means any such body of the regular air force as may from time to time be declared by any order of Her Majesty to be a corps for the purposes of the Air Force Act 1955: s 223(1). As to trade groups see para 207 ante.

2 See the Air Force Act 1955 s 21 (amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9(4)); and for the equivalent military provisions see para 196 ante. The Queen's Regulations for the Royal Air Force (5th Edn, 1999) place restrictions on the acceptance of aliens, and require them to complete a special form which, if they are accepted, must be attached to their attestation papers: Ch 10 para 487(1)-(3).

3 See *ibid* Ch 10 para 487(5). As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

4 As to authorised recruiting officers see the Air Force Act 1955 s 1; the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 para 6; the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 10 para 484. As to the enlistment of a person who has not been discharged from an already existing engagement see para 197 note 7 ante (which is applicable to enlistment into the Royal Air Force).

5 See the Air Force Act 1955 s 2, Sch 1; and the Armed Forces Act 1971 s 63(1). For the equivalent provisions relating to the regular forces see paras 196-197 ante. As to enlistment into the Air Force Reserve and the Royal Auxiliary Air Force see paras 223 et seq, 228 et seq post.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

209 Enlistment, eligibility and procedure

TEXT AND NOTE 2--As to restrictions on aliens in the regular forces, see now the Armed Forces Act 2006 s 340. For the meaning of 'regular forces' see PARA 191. See also the Armed Forces (Aliens) Regulations 2009, SI 2009/835, which provide that the Armed Forces Act 2006 s 340 does not apply to a citizen or national of Nepal who serves, or has for not less than five years served, in the Brigade of Gurkhas.

NOTE 4--Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/210. Terms of enlistment; extension or reduction of periods of service.

210. Terms of enlistment; extension or reduction of periods of service.

A person may be enlisted¹ in the Royal Air Force for a term beginning with the date of the entrant's attestation² and expiring on a date falling between six months and 22 years after the relevant date³. The term for which a person is enlisted may consist wholly of air force service⁴ or partly of air force service and partly of service with the Air Force Reserve⁵.

A person in air force service enlisted for a term of shorter duration than the longest term specified above may, after giving notice to the competent air force authority⁶, and with that authority's approval (which must be notified to the person), be treated as if he had enlisted for an extended term⁷. The Defence Council may make regulations enabling a person to reduce the term of his service⁸.

1 Terms of service in the Royal Air Force are governed by the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820 (as amended). The revocations effected by these regulations do not affect the term of service for which any person was serving in air force service immediately before their commencement: reg 18(3).

2 Ibid reg 3(1).

3 Ibid reg 3(2) (amended by SI 1997/231). The 'relevant date' means the date of attestation or, in the case of: (1) a man who enlists on any date; and (2) a woman who enlists on or after 1 April 1975, before attaining the age of 18, the date of that person's attaining the age of 18: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 2(1). As to the effect of equivalent provisions in the Army Terms of Service Regulations 1992, SI 1992/1365 (as amended) on the liabilities of those within their scope see para 198 note 4 ante. A person aged 16 or 17 may be enlisted for a special term of 12 months' duration wholly of air force service (the Royal Air Force Youth Training Scheme): see the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 4.

4 'Air force service' means service in the regular air force: ibid reg 2(1) (amended by SI 1997/231). For the meaning of 'regular air force' see para 206 ante.

5 Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 3(3) (amended by SI 1997/231). For transitional provisions relating to women who enlisted before 1 April 1986 see the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, Sch 2 (amended by SI 2001/542).

6 'Competent air force authority' in this context means the Director of Personnel Management Agency (Ground Trades) (RAF) in the case of personnel serving in ground trades; and the Director of Personnel Management Agency (Officers and Airmen Aircrew) (RAF) in the case of personnel serving in an aircrew category: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 16, Sch 1 (amended by SI 2001/542).

7 Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 14(1). The extended term must be either a term of a duration provided for by reg 3 (as amended) or, if longer, a term to end not later than the day on which the person in question attains the age of 55, in either case specified in the notice given by the applicant and in the notification of approval which must be given; the extended term may include service in the reserve for men, and for women giving notice after 1 April 1986, but the extended term must not include service in the reserve later than 22 years after the relevant date: reg 14(1). As to the forms to be used in giving notice or notifying approval under reg 14(1) see reg 17. As to transfer to the reserve or discharge see para 211 post; and as to reduction in period of service see the text and note 8 infra.

8 Armed Forces Act 1966 s 2(1)(f); Armed Forces Act 1976 s 2. See the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820 (as amended), which provide that a person in air force service enlisted for the longest term provided for in those regulations may, after giving notice to the competent air force authority and with its approval, be treated as if he had enlisted for a term to end not later than the date on which he attains the age of 55 years and specified in the notice and notification of approval: reg 14(2). If it were not for this provision, a person desiring his term of service to be shortened on account of some special circumstances could

only be assisted by being discharged and re-enlisted. As to the forms to be used in such a case see reg 17. A person in air force service enlisted for any term provided for in the regulations (including a person treated under the regulations as having enlisted under an extended term) may, after giving notice in writing to the competent air force authority and with the approval of that authority (which must be notified), be treated as if he had enlisted for a term of such shorter duration as is specified in the notice and notification of approval: reg 14(3). As to the Defence Council see para 2 ante.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

210-213 Terms of enlistment ... Other provisions as to air force terms of service

SI 1985/1820 replaced by the Royal Air Force Terms of Service Regulations 2007, SI 2007/650 (amended by SI 2009/1089). The regulation numbers remain the same unless otherwise stated.

210 Terms of enlistment; extension or reduction of periods of service

NOTE 1--SI 1985/1820 reg 18(3) now SI 2007/650 reg 19(3).

NOTE 3--Head (1) for 'on any date' read 'before 1 April 2007'; and head (2) after '1 April 1975' add 'and before 1 April 2007': SI 2007/650 reg 2(1). SI 1985/1820 reg 4 not replicated.

NOTE 6--Replaced. 'Competent Air Force Authority' means the Defence Council, the Air Force Board, the Air Secretary or any person authorised by him: SI 2007/650 reg 2(1) (definition substituted by SI 2009/1089).

NOTES 7, 8--SI 1985/1820 reg 17 now SI 2007/650 reg 18.

TEXT AND NOTE 8--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

NOTE 8--After 'service enlisted for' read 'a term of equal duration to': SI 2007/650 reg 14(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/211. Transfer to the reserve and determination of service.

211. Transfer to the reserve and determination of service.

A person in air force service¹ has the right, at the end of the period of nine years beginning with the relevant date², and at any subsequent time: (1) in the case of a person who has completed less than 20 years and six months' service, to be transferred to the reserve; (2) in the case of a person who has completed not less than 20 years and six months' service, to determine his service³.

Further, a person who has attained the age of 16 years may be enlisted in the Royal Air Force for a term of not less than three nor more than nine years' air force service from the relevant date, with the right to be transferred to the reserve on or at any time after the expiration of three years after the end of his period of training⁴.

A person who, in consideration of being permitted to undergo a course of instruction⁵, or of receiving any other benefit or advantage, consents in writing to be restricted in the exercise of any rights of discharge or transfer to the reserve⁶ is precluded from exercising those rights before the expiration of a period, known as the 'appropriate period', specified in the consent⁷.

A person in air force service whose application for transfer to the reserve is approved by the competent air force authority may be so transferred⁸.

A person transferred to the reserve in consequence of the exercise of a right to be so transferred, or with the approval of the competent air force authority⁹, must serve in the reserve for a period beginning on the date of his transfer and ending either six years later or 22 years after the relevant date, whichever is the sooner, or for such shorter period as the competent air force authority may approve¹⁰.

A recruit¹¹ has the right to determine his service by giving 14 days' notice in writing to his commanding officer¹².

There are Royal Air Force regulations providing for airmen to purchase their discharge from air force service, not as a matter of legal right, but as a privilege which may be granted, withheld or deferred at the discretion of the Defence Council¹³.

1 For the meaning of 'air force service' see para 210 note 4 ante.

2 For the meaning of the 'relevant date' see para 210 note 3 ante.

3 Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 7(1), (2). These provisions apply equally to women enlisting after 1 April 1986: Sch 2 para 1(a) (amended by SI 2001/542). A person who enlists for service in an aircrew category has the right to be transferred eight years from the relevant date or six years from the end of his period of training, whichever is the later: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 7A (added by SI 1989/994). The rights conferred by the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, regs 5 (as amended), 7, 7A (as added) must be exercised by notice in writing given to the commanding officer of the person in question not less than 18 months before the date when his service is to be determined or he is to be transferred to the reserve: reg 11. The Defence Council publishes forms of application, consents and notices for the purpose of these regulations, and references to applications, consents or notices must be construed as referring to such forms or to forms to substantially like effect: reg 17. As to the Defence Council see para 2 ante.

4 Ibid reg 5(1) (amended by SI 1990/2374; SI 1997/231; SI 2001/542). As to the means of exercising these rights see note 3 supra. A person enlisted pursuant to the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 5 (as amended) retains the right to transfer to the reserve notwithstanding that his term is extended under reg 14(1) (see para 210 ante): reg 5(3) (substituted by SI 1990/2374). A person enlisted under

the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 5 (as amended) may apply by notice in writing to his commanding officer to be treated as if he had been enlisted under reg 3 (as amended) (see para 210 ante) for a term equal in length to the term for which he was enlisted under reg 5 (as amended); and, if the competent air force authority approves his application, he is to be so treated from the date on which his application is approved: reg 5(4) (added by SI 1997/231). For the meaning of 'competent air force authority' see para 210 note 6 ante.

5 The course must be of not less than three weeks' duration: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 12(1)(a).

6 Ie the rights conferred by ibid reg 5 (as amended), regs 7, 7A (as added) and reg 15(2) (see the text and notes 1-4 supra; and para 212 post).

7 Ibid reg 12(1) (amended by SI 2001/542). In relation to permission to undergo a course of instruction, the duration of which is not more than three months, the 'appropriate period' is not more than three years; if the course is of longer duration, it is not more than five years; and in relation to the receipt of any other benefit or advantage, it is not more than six years: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 12(2). The appropriate period begins on the date on which the person in question completes the course of instruction, or on such other date as is mentioned in such consent: reg 12(1). The rights of discharge or transfer (see note 4 supra) are not exercisable by a person who enlisted for 22 years and gave an undertaking not to determine his service, before the expiration of the period specified in such undertaking: see reg 12(3). Consent given under reg 12 may be revoked on the approval of the competent air force authority: reg 12(4).

8 Ibid reg 10. This provision provides a discretion to authorise transfer to the reserve in any case not covered by the rights to such transfer conferred by reg 5 (as amended) (see the text and note 4 supra).

9 Ie under ibid reg 10.

10 Ibid reg 13 (amended by SI 2001/542).

11 'Recruit' means a recruit enlisted in the regular air force who has not previously so enlisted: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 2(1).

12 Ibid reg 8(1) (amended by SI 2001/542). Such notice only has effect if the recruit has completed 28 days service excluding leave before the expiration of six months from the date of his attestation: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 8(2). However, if such notice expires at a time when airmen are required to continue in service (ie because of an order under the Air Force Act 1955 s 10: see para 213 post), the recruit is not entitled to be discharged so long as the situation continues: Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 8(3). For equivalent provisions in relation to the army see para 200 ante.

13 See the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 10 paras 586-588.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

210-213 Terms of enlistment ... Other provisions as to air force terms of service

SI 1985/1820 replaced by the Royal Air Force Terms of Service Regulations 2007, SI 2007/650 (amended by SI 2009/1089). The regulation numbers remain the same unless otherwise stated.

211 Transfer to the reserve and determination of service

NOTE 3--SI 1985/1820 regs 7(1), (2), 7A, 11, 17 now SI 2007/650 regs 6(1), (2), 7, 10, 18. The rights conferred by reg 5 must be exercised by notice in writing given to the commanding officer by the person in question not less than 12 months before the date when he is to be transferred to the reserve: reg 11.

NOTE 4--SI 1985/1820 reg 5(1), (3), (4) now reg 4(1), (2), (3). A person aged 17 years 10 months may be enlisted in the Princess Mary's Royal Air Force Nursing Service for a term of air force service which will expire either 22 years from the relevant date, or on the date of the enlisted person's fifty-fifth birthday: reg 5.

NOTE 6--SI 1985/1820 regs 5, 7, 7A now SI 2007/650 now regs 4, 6, 7.

NOTES 8, 9--SI 1985/1820 reg 10 now SI 2007/650 reg 9.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/212. Continuance in service after completion of the term of service.

212. Continuance in service after completion of the term of service.

A person in air force service¹ enlisted for a term of 22 years², or a person in air force service who enlisted otherwise than for that term but has completed 22 years' service in Her Majesty's forces³, may at any time during the last three years of the term for which he enlisted (or, if that term has been extended⁴, that term as so extended) give notice in writing to his commanding officer of his desire to continue in service after the end of that term (or of that term as so extended, as the case may be)⁵. If the competent air force authority⁶ consents, he may then continue, after the end of that term (or of that term as so extended, as the case may be), as an airman of the regular air force in all respects as if his term were still unexpired⁷. He is not, however, while so continued in service, entitled to apply for transfer to the reserve with the approval of the competent air force authority⁸, or to apply to be treated as if he had enlisted for an extended term⁹, but he may determine his service at any time on giving three months' notice to his commanding officer of his wish to be discharged¹⁰.

1 For the meaning of 'air force service' see para 210 note 4 ante.

2 As to the saving of rights under enactments repealed or revoked see para 210 note 1 ante.

3 Ie in any of Her Majesty's forces.

4 Ie under the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 14(1) (see para 210 text and note 7 ante), or under any enactment repealed by those regulations: reg 15(1).

5 Ibid reg 15(1) (amended by SI 2003/2305). A person in air force service on 1 October 2003 who at that date has not already given notice under the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 15(1) may give notice during such shorter period than 3 years as at that date remains of the term for which he enlisted: see reg 15(1) (as so amended).

6 For the meaning of 'competent air force authority' see para 210 note 6 ante.

7 Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 15(1). For the meaning of 'regular air force' see para 206 ante.

8 Ie pursuant to ibid reg 10: see para 211 text and note 8 ante.

9 Ie pursuant to ibid reg 14(1): see para 210 text and note 7 ante.

10 Ibid reg 15(2). This right is, however, subject to reg 12 (see para 211 text and note 7 ante): reg 15(2).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve

Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

210-213 Terms of enlistment ... Other provisions as to air force terms of service

SI 1985/1820 replaced by the Royal Air Force Terms of Service Regulations 2007, SI 2007/650 (amended by SI 2009/1089). The regulation numbers remain the same unless otherwise stated.

212 Continuance in service after completion of the term of service

TEXT AND NOTE 1--A person in air force service enlisted in the Princess Mary's Royal Air Force Nursing Service on an open engagement pursuant to SI 2007/650 reg 5 who is unable to complete 22 years' service before the date of his fifty-fifth birthday may, at any time during the last three years prior to his fifty-fifth birthday, give notice in writing to his commanding officer of his desire to continue in service after the date of his fifty-fifth birthday. If the competent air force authority consents, he may continue in service in all respects as if his term were still unexpired. He is not, however, while so continued in service, entitled to apply for transfer to the reserve with the approval of the competent air force authority, or to apply to be treated as if he had enlisted for an extended term, but he may determine his service at any time on giving three months' notice to his commanding officer of his wish to be discharged: reg 16.

NOTE 4--See also SI 2007/650 reg 14(2).

NOTE 5--Replaced. See now SI 2007/650 reg 15(1).

NOTE 8--SI 1985/1820 reg 10 now SI 2007/650 reg 9.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/213. Other provisions as to air force terms of service.

213. Other provisions as to air force terms of service.

In relation to the following matters, the legal provisions relating to the regular air force¹ correspond with those which apply to the regular army: the formalities as to enlistment, including the validity of attestation²; forfeiture of service for desertion in cases of conviction by court-martial³, and of confession of guilt⁴; the postponement, on account of the existence of a state of war or certain other forms of national emergency or danger, of the discharge or transfer to the reserve of persons who would otherwise be entitled to be discharged or transferred⁵; and the procedures for discharge and transfer to the reserve⁶.

1 For the meaning of 'regular air force' see para 206 ante.

2 See the Air Force Act 1955 ss 1, 2, 18, Sch 1 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). These provisions correspond to the Army Act 1955 ss 1, 2, 18, Sch 1 (as amended): see para 197 ante.

3 See the Air Force Act 1955 s 17 (amended by the Army and Air Force Act 1961 ss 12, 13, 38(1), Sch 2; the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I; the Armed Forces Act 1971 ss 43, 77(1), Sch 1 para 1(2), Sch 4 Pt I; and the Armed Forces Act 1976 s 22(6), Sch 10); and the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 18. As to the equivalent provisions relating to the regular army see para 199 ante. See also the Army and Air Force Act 1961 s 13(3) (amended by the Royal Air Force Terms of Service Regulations 1977, SI 1977/1097, reg 13(3), Sch 2 Pt II), which protects persons whose term of engagement has been extended pursuant to the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820, reg 9(1) or reg 9(5) so as to end on the date of their fifty-fifth birthday from being required to serve beyond that date by reason of the effect of any forfeiture of service under the Air Force Act 1955 s 17 (as amended). This provision has no counterpart in any of the enactments relating to the regular army, doubtless because those enactments make no provision for any such term of engagement. The Air Force Act 1955 s 17(5) is in similar terms but, since it is directed to the protection of persons re-engaged under the Air Force Act 1955 s 7 (repealed), its practical effect is largely spent. As to the offence of desertion see para 404 post. As to courts-martial see para 480 et seq post.

4 See *ibid* s 81 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I; and the Armed Forces Act 1971 s 77(1), Sch 4 Pt I). See also note 2 *supra*.

5 See the Air Force Act 1955 ss 9, 10 (substituted by the Armed Forces Act 1966 s 12; and amended by the Reserve Forces Act 1996 s 126, Sch 7 paras 5, 6). These provisions correspond to the Army Act 1955 ss 9, 10: see para 203 ante. As to the postponement of discharge of persons liable to proceedings for offences against service law, or who are outside the United Kingdom and serving sentences of imprisonment or detention awarded by a court-martial see the Air Force Act 1955 s 13; the Army Act 1955 s 13; and para 203 text and notes 13-15 ante.

6 See the Air Force Act 1955 ss 11, 12 (s 11 amended by the Armed Forces Act 1996 s 3(1)). These provisions correspond to the Army Act 1955 ss 11, 12: see para 204 ante. As to the right of a warrant officer sentenced by court-martial to be reduced to the ranks to determine his service see the Air Force Act 1955 s 15, which corresponds to the Army Act 1955 s 15 (see para 204 text and note 13 ante).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2)

Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

210-213 Terms of enlistment ... Other provisions as to air force terms of service

SI 1985/1820 replaced by the Royal Air Force Terms of Service Regulations 2007, SI 2007/650 (amended by SI 2009/1089). The regulation numbers remain the same unless otherwise stated.

213 Other provisions as to air force terms of service

NOTE 3--Army and Air Force Act 1961 repealed: Armed Forces Act 2006 Sch 17. SI 1985/1820 reg 18 now SI 2007/650 reg 19. SI 1985/1820 reg 9 not replicated.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (ii) The Regular Air Force/214. Command and attachment to naval or regular forces.

214. Command and attachment to naval or regular forces.

Provisions relating to the powers of command generally, the powers of command of members of co-operating naval and military forces of the Crown in relation to the regular air force¹, and the attachment of members of the regular air force to either of those forces are in like terms to those referring to the regular forces².

¹ For the meaning of 'regular air force' see para 206 ante.

² See the Air Force Act 1955 ss 177-179 (s 179 amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). These provisions correspond to the Army Act 1955 ss 177-179 (as amended) (see para 205 ante).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

214 Command and attachment to naval or regular forces

TEXT AND NOTES--An officer, warrant officer or non-commissioned officer of a regular or reserve force who is subject to service law ('A') has, over members of any other such force who are of inferior rank or rate to A, such powers of command as are dependent on rank or rate: Armed Forces Act 2006 s 354. For the meaning of 'subject to service law' see PARA 303-313.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (iii) Rehabilitation of Offenders/215. Application of the legislation to personnel administration within the land and air forces.

(iii) Rehabilitation of Offenders

215. Application of the legislation to personnel administration within the land and air forces.

The broad aim of the Rehabilitation of Offenders Act 1974¹ is to rehabilitate offenders who have not been reconvicted of any serious offence for specified periods after an earlier conviction, by providing that after the applicable rehabilitation period any such conviction is to be treated as spent, and that any unauthorised disclosure of it is to be penalised². The provisions of the Act have a bearing on many areas of personnel administration in the armed forces³. Appropriate action has therefore been taken, by the issue of directives from the Ministry of Defence⁴, to bring these provisions to the notice of those likely to be concerned with them in the course of their duties, so as to secure compliance with the requirements of the Act. As it is necessary to maintain official records of convictions of members of the armed forces, including convictions which have become spent⁵, the directives not only state the statutory provisions which in general prohibit the disclosure of spent convictions⁶, but also refer to the instances in which spent convictions may be disclosed and in which the rehabilitated person may be asked, and required to answer, questions the answers to which involve the disclosure of such convictions⁷.

The general rule is that (otherwise than in proceedings before a judicial authority)⁸ a question seeking information as to a person's previous convictions, offences, conduct or circumstances must be treated as not referring to spent convictions or circumstances ancillary to them, and the answer may be framed accordingly, without subjecting the person questioned to any liability or prejudice in law by reason of his failure to disclose or acknowledge any spent conviction (or ancillary circumstances) in his answer⁹. Of the exceptions to this general rule, the one which principally bears upon personnel administration in the armed forces is that the rule permitting non-disclosure does not apply to any question asked by or on behalf of any person in the course of his duties as an employee of the Crown, in order to assess, for the purpose of safeguarding national security (or, in Northern Ireland, of protecting public safety or order¹⁰), the suitability of the person to whom the question is addressed, or of any other person, for any office or employment, provided that the person questioned is informed when the question is asked that (by virtue of the relevant statutory order) spent convictions are to be disclosed for the purpose of safeguarding national security or of protecting public safety or order, as the case may be¹¹. Another relevant exception is that whereas a spent conviction, or failure to disclose such a conviction, is not generally a proper ground for dismissing or excluding a person from any office, occupation or employment¹², it is otherwise when such action is taken for the purpose of safeguarding national security, or of protecting public safety or order, as the case may be¹³.

1 As to the bearing of the Rehabilitation of Offenders Act 1974 upon the admissibility of evidence in service disciplinary proceedings, and the conduct of those proceedings generally, see para 388 post.

2 For a general account of the provisions of the Rehabilitation of Offenders Act 1974 see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2108 et seq.

3 Eg recruitment, commissioning, postings to particular areas or locations, training for particular kinds of work, promotions, extensions of service or re-engagement.

4 As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

5 le because these are, or may be, required to enable mention of them to be made in criminal or service disciplinary proceedings, or on appeal from them, where this is authorised by the Rehabilitation of Offenders Act 1974 s 7(2)(a), (b) (see para 388 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1512), or where national security (or, in Northern Ireland, the protection of public safety or order) is involved (see the text and notes 9-12 infra).

6 See *ibid* s 4(1)-(3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) paras 2108, 2114-2115 et seq.

7 See *ibid* ss 4(4), 7; the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023; and the Rehabilitation of Offenders (Northern Ireland) (Exceptions) Order 1979, SI 1979/195.

8 The definition of 'proceedings before a judicial authority' in the Rehabilitation of Offenders Act 1974 is wide enough to include service disciplinary proceedings: see s 4(6); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2108. See also note 5 *supra*.

9 See *ibid* s 4(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2114.

10 See the Rehabilitation of Offenders (Northern Ireland) (Exceptions) Order 1979, SI 1979/195, art 2(b).

11 See the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(b); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2114.

12 See the Rehabilitation of Offenders Act 1974 s 4(3)(b); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2115.

13 *Ibid* s 4(4); Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(c); Rehabilitation of Offenders (Northern Ireland) (Exceptions) Order 1979, SI 1979/195, art 3(c).

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(1) ENLISTMENT AND SERVICE/ (iii) Rehabilitation of Offenders/216. Scope of rehabilitation for persons dealt with in service disciplinary proceedings.

216. Scope of rehabilitation for persons dealt with in service disciplinary proceedings.

For the purposes of the Rehabilitation of Offenders Act 1974, any finding of guilty in service disciplinary proceedings¹ is treated as a conviction, and any punishment awarded or order made in respect of a civilian offender² in respect of any such finding is treated as a sentence³.

Subject to this, the sentences excluded from rehabilitation under the Act when awarded in service disciplinary proceedings are the same as those so excluded when imposed in criminal proceedings in a civil court⁴.

The rehabilitation periods applicable to punishments or orders awarded or made in service disciplinary proceedings are dealt with elsewhere in this work⁵.

1 'Service disciplinary proceedings' means (so far as the land and air forces are concerned) any proceedings, whether they take place in Great Britain or elsewhere, which are: (1) under the Army Act 1955, the Air Force Act 1955, or any corresponding Act previously in force, whether before a court-martial or any other court or person authorised thereunder to award a punishment in respect of any offence; (2) before a standing civilian court established under the Armed Forces Act 1976 (see para 520 et seq post); or (3) under any corresponding enactment or law applying to a force (other than a home force) to which the Visiting Forces (British Commonwealth) Act 1933 s 4 applies or did apply at the time of the proceedings, being proceedings in respect of a member of a home force attached, at the time of the proceedings, to the first-mentioned force under s 4: Rehabilitation of Offenders Act 1974 s 2(5) (amended by the Armed Forces Act 1976 s 22(5), Sch 9 para 20(3)). As to the Visiting Forces (British Commonwealth) Act 1933 s 4 see para 255 post. A finding of guilty, or a punishment awarded or order made by an army or air force court-martial, may not be treated as a finding or sentence or order of the court until confirmed, and confirmation may not be deemed to be completed until the finding, sentence or order has been promulgated: see the Army Act 1955 s 209(3)(aa) (as added); the Air Force Act 1955 s 209(3)(aa) (as added); and para 430 et seq post. For the meaning of 'order', and as to the treatment of such orders, see note 2 infra. For the meaning of 'Great Britain' see para 20 note 1 ante.

2 Ie an order made in respect of a civilian offender, by virtue of the Army Act 1955 Sch 5A (as added and amended) or the Air Force Act 1955 Sch 5A (as added and amended): see para 430 et seq post. Any such order is treated as a sentence to the same extent as a punishment: Rehabilitation of Offenders Act 1974 s 2(1) (amended by the Armed Forces Act 1976 Sch 9 para 20(1); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III).

3 Rehabilitation of Offenders Act 1974 s 2(1) (as amended: see note 2 supra).

4 See *ibid* s 5(1), (1A) (s 5(1A) added by the Armed Forces Act 1976 Sch 9 para 20(4), (5)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) paras 2111, 2119-2132.

5 See para 388 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) paras 2119, 2121.

UPDATE

191-216 Enlistment and Service

Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006. For provision as to enlistment, and terms and conditions of enlistment and service, see now the Armed Forces Act 2006 ss 328, 329. As to forfeiture of service for desertion, see the Armed Forces Act 2006 s 330; and the Armed Forces (Forfeiture of Service) (No 2) Regulations 2009, SI 2009/1090. The Defence Council may make provision with respect to (1) the discharge of members of the regular forces of or below the rank or rate of warrant officer; (2) the transfer of such persons to the reserve forces: see the Armed

Forces Act 2006 s 331; and the Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations 2009, SI 2009/1091. As to administrative restrictions on reductions in rank or rate, see s 332.

216 Scope of rehabilitation for persons dealt with in service disciplinary proceedings

NOTE 1--Rehabilitation of Offenders Act 1974 s 2(5) further amended, s 2(6) added: Armed Forces Act 2006 Sch 16 para 64.

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(2) PAY AND PROPERTY

(i) Pay

217. Authority for and rates of pay and allowances.

Specific authority is granted to the Crown to make orders relating to the pay of the regular air force¹, but the authority for paying the regular army rests solely on prerogative. There is therefore no statutory requirement that these forces must be paid, or relating to any amount that they should be paid², and no right exists in personnel of either force to any pay³. The rates of pay and allowances for the regular forces are laid down by royal warrant⁴ and by regulations made under the prerogative⁵, and for the regular air force by orders made under the Air Force (Constitution) Act 1917⁶.

1 See the Air Force (Constitution) Act 1917 s 2; and para 9 ante. For the meaning of 'regular air force' see para 206 ante.

2 The pay of a pensioner recalled for service may not be reduced by reason of his receipt of both pay and pension: Reserve Forces Act 1980 s 31(5) (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11). As to the restriction on the making of distinctions between service men and women as regards pay, allowances or leave see para 18 ante.

3 *Macdonald v Steele* (1793) Peake 175; *Gidley v Lord Palmerston* (1822) 3 Brod & Bing 275; *Re Baron De Bode* (1838) 6 Dowl 776; *Gibson v East India Co* (1839) 5 Bing NC 262; *Ex p Napier* (1852) 18 QB 692; *Re Tufnell* (1876) 3 ChD 164; *Grant v Secretary of State for India* (1877) 2 CPD 445; *Kinloch v Secretary of State for India in Council* (1882) 7 App Cas 619, HL; *De Dohse v R* (1886) 66 LQB 422n, HL; *R v Secretary of State for War* [1891] 2 QB 326, CA; *Dunn v R* [1896] 1 QB 116, CA; *Leaman v R* [1920] 3 KB 663 (soldier); *Kynaston v A-G* (1933) 49 TLR 300, CA (officer). See also para 4 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 902; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 111.

4 I.e. the warrant of Her Majesty for the time being in force regulating the pay and promotion of the army: Army Act 1955 s 225(1). Royal warrants concerning pensions are authorised by the Pensions and Yeomanry Pay Act 1884 s 2 (repealed in relation to pay and pensions of the Yeomanry by the Statute Law (Repeals) Act 1976), but there is no statutory authority for warrants concerning pay. As to pensions see para 263 et seq post. Warrants, being documents made under prerogative powers, are not statutory instruments within the meaning of the Statutory Instruments Act 1946 s 1. Important changes in conditions of pay are announced by command papers presented to Parliament. For bounties, gratuities and allowances which are exempt from income tax see INCOME TAXATION vol 23(2) (Reissue) para 1227. Mess subscriptions are not deductible in assessing the pay of an army officer for income tax purposes: see INCOME TAXATION vol 23(1) (Reissue) para 646.

5 Such regulations are not statutory instruments and are not recorded in this work.

6 I.e. under the Air Force (Constitution) Act 1917 s 2. These orders are not statutory instruments: Statutory Instrument Regulations 1947, SI 1948/1, reg 2(3)(c), Schedule (substituted by SI 1982/1728). As to the announcement of changes in conditions of pay see note 4 supra.

UPDATE

217 Authority for and rates of pay and allowances

TEXT AND NOTES--See now the Armed Forces Act 2006 s 333 which provides that Her Majesty may by warrant make provision with respect to pay, bounty and allowances for members of the regular or reserve forces. For the meaning of 'regular forces' see PARA 191; and for the meaning of 'reserve forces' see PARA 306-313.

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218. Forfeiture of and deductions from pay; assignment.

Any forfeiture from the pay of any member of the regular forces or regular air force¹ must be authorised by statute, but deductions from pay other than penal deductions² may be authorised in regard to the regular forces by royal warrant alone³, and in regard to the regular air force by an order made under the Air Force (Constitution) Act 1917⁴. There are distinctions between forfeitures of pay and deductions from pay as regards the manner in which they may be enforced. Whereas a forfeiture of pay may be imposed only against pay as such⁵, any amount authorised to be deducted from the pay of a member of the regular forces or the regular air force may be deducted from any balance (whether or not representing pay) which may be due to him⁶. When a forfeiture of pay has been ordered, it is permissible for it to be enforced in such a manner as to enable the person concerned to remain in receipt of a minimum rate of pay⁷, but where a person becomes liable to a deduction from pay it is a mandatory requirement⁸ that he is to remain in receipt of such minimum rate of pay as is prescribed⁹. Certain forfeitures and deductions may be remitted by the Defence Council, or as provided for by royal warrant or order under the Air Force (Constitution) Act 1917¹⁰.

Any attempt to assign, agree to assign or cause a charge to be made on the pay of any member of the regular forces or regular air force is void¹¹. A similar prohibition extends to any military or air force award, grant, pension or allowance payable to any person in respect of his or any other person's service in the military or air forces¹².

1 For the meaning of 'regular forces' see para 191 ante; and for the meaning of 'regular air force' see para 206 ante.

2 'Penal deduction' means a deduction made by reason of the commission of any offence or other wrongful act or in consequence of negligence: Army Act 1955 s 144(2); Air Force Act 1955 s 144(2). As to stoppages (ie the recovery by deductions from the pay of an offender of a specific sum by way of compensation for any expense, loss or damages occasioned by the offence) see para 424 post. Other penal deductions from pay may be made for the purpose of the payment of penalties awarded by civil courts (see the Army Act 1955 s 146; and the Air Force Act 1955 s 146 (both amended by the Army and Air Force Act 1961 s 27(1)), or as compensation for damage to public or service property occasioned by a wrongful act or negligence (see the Army Act 1955 s 147; and the Air Force Act 1955 s 147 (both amended by the Armed Forces Act 2001 s 34, Sch 6 para 39; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). However, such an order may not be made if, in any court-martial or other proceedings under any of the service discipline Acts, the person has been acquitted in circumstances involving a finding that he was not guilty of the act or negligence in question, or has been awarded stoppages in respect of the same loss or damage: Army Act 1955 s 147(3); Air Force Act 1955 s 147(3). Penal deductions from pay may also be made in respect of barrack damage: see the Army Act 1955 s 148; and the Air Force Act 1955 s 148.

3 Army Act 1955 s 144(1), (2). A royal warrant or Defence Council regulation, order or instruction may impose a forfeiture or deduction authorised by statute: see s 144(3). As to the Defence Council see para 2 ante. A royal warrant may authorise the deduction of any sum recoverable under the enactments relating to the reserve or auxiliary military forces (see para 223 et seq post): s 144(4). Pay of all ranks of the regular forces may be forfeited for absence from duty for the following reasons: absence through desertion, absence without leave, periods of imprisonment, detention or field punishment, periods in hospital due to sickness or injury occasioned by an offence of which the person is found guilty and periods spent as prisoner of war in certain circumstances: s 145(1), (2) (amended by the Armed Forces Act 1971 ss 43, 77(1), Sch 1 para 1(7), Sch 4 Pt I; and the Criminal Justice Act 1982 s 58, Sch 8 para 6). As to the imposition of fines as punishments see para 219 post. Maintenance and affiliation orders may be enforced by deductions from pay, and such deductions may be made for the maintenance of a wife or child, or to satisfy judgment debts: see paras 74-75 ante. Such deductions may not in total exceed such proportion as may be determined by the Defence Council: see the Army Act 1955 s 152(1) (as substituted and amended); the Air Force Act 1955 s 152(1) (as substituted and amended); and para 74 ante. Any forfeiture under the Army Act 1881 (repealed) which had effect immediately

before the commencement of the Army Act 1955 is continued as if made under the Army Act 1955: Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 para 12(1).

4 le under the Air Force (Constitution) Act 1917 s 2 (see paras 9, 15 ante): see the Air Force Act 1955 s 144(1), (2). Such an order is equivalent in its effect to a royal warrant. Subject to any such order, the Defence Council may make regulations as to any matter with respect to which Her Majesty may make orders under the Air Force (Constitution) Act 1917 s 2: see s 2(3); and para 9 ante. Forfeitures and deductions may be imposed and made under those provisions of the Air Force Act 1955 which correspond to those of the Army Act 1955 cited in notes 2-3 supra. As to forfeitures, stoppages and deductions see also the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 1 paras 4, 7, Ch 15 paras 1060, 1067, 1075, and Ch 36 paras 2675-2676, 2732-2742.

5 'Pay' includes any form of pay authorised by the Pay Warrant for the army (eg, in addition to ordinary pay, command pay, special qualification pay and specialist pay) or by the Queen's Regulations for the Royal Air Force (5th Edn, 1999) (eg in addition to ordinary pay, flying pay, parachutist pay and specialist pay), but does not include allowances: *Bayley v Bayley* [1922] 2 KB 227. However, in certain circumstances, entitlement to allowances is dependent upon entitlement to pay, and forfeiture of pay may therefore involve the cessation of allowances.

6 Army Act 1955 s 144(7); Air Force Act 1955 s 144(7).

7 Army Act 1955 s 144(6); Air Force Act 1955 s 144(6). The minimum rate is that prescribed under the Army Act 1955 s 144(5) or the Air Force Act 1955 s 144(5): see note 9 infra. Any pay which the person is thus permitted to receive during the period for which his pay was to be forfeited may be recovered from him by deduction from pay: Army Act 1955 s 144(6); Air Force Act 1955 s 144(6).

8 This requirement is, however, subject to any forfeiture which may be imposed: Army Act 1955 s 144(5); Air Force Act 1955 s 144(5).

9 Army Act 1955 s 144(5); Air Force Act 1955 s 144(5). The minimum rate is as prescribed by regulations made by the Defence Council: Army Act 1955 s 144(5); Air Force Act 1955 s 144(5) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). Defence Council regulations are not statutory instruments and are not recorded in this work.

10 See the Army Act 1955 s 149, and the Air Force Act 1955 s 149. These provisions, however, apply only to forfeitures imposed or deductions made under the Army Act 1955 ss 145-148 (as amended) or the Air Force Act 1955 ss 145-148 (as amended) (see notes 2-4 supra), or under royal warrant or order, as appropriate. Where a person is liable for deductions in respect of maintenance payments or judgment debts (see notes 3-4 supra), and, before or after any such deductions have been ordered, he incurs a forfeiture of pay under the finding or sentence of a court-martial or a finding or order in summary proceedings (ie a forfeiture under the Army Act 1955 s 145(1)(a), (b) or (c), or the Air Force Act 1955 s 145(1)(a), (b) or (c)), the forfeiture applies only to the pay remaining after the deductions have been made: Army Act 1955 s 152(2); Air Force Act 1955 s 152(2) (both amended by the Armed Forces Act 1971 s 59(2)).

11 See the Army Act 1955 s 203(1); and the Air Force Act 1955 s 203(1). Unless authorised by one of these statutes (eg as in the case of a court-martial authorised to make an order for stoppages), no court may make any order which would have the effect of restraining any person from receiving anything which, by virtue of the Army Act 1955 s 203 or the Air Force Act 1955 s 203, he is precluded from assigning and of directing payment to another person: Army Act 1955 s 203(2); Air Force Act 1955 s 203(2). The pay and allowances of a debtor who is a member of Her Majesty's forces, other than pay or allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996: see para 251 post), may not be made the subject of an attachment of earnings order under the Attachment of Earnings Act 1971: see ss 22(5), 24(2)(b); the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086; and CIVIL PROCEDURE vol 12 (2009) PARAS 1432, 1445. However, pensions (other than disablement or disability pensions) payable in respect of military or air force service may be the subject of such an order: Attachment of Earnings Act 1971 ss 22(5), 24(1)(b). See *Roberts v Roberts* [1986] 2 All ER 483, [1986] 1 WLR 437 (order for lump sum payment for financial provision on divorce, based on army discharge gratuity, not permissible); *Ranson v Ranson* [1988] 1 WLR 183, CA (order for lump sum equal to specified percentage of gratuity not permissible). The Army Act 1955 s 203 and the Air Force Act 1955 s 203 do not prejudice any enactment providing for the payment to a trustee in bankruptcy of any sum for distribution among creditors: Army Act 1955 s 203(3); Air Force Act 1955 s 203(3). See also para 271 post; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY; CIVIL PROCEDURE vol 12 (2009) PARA 1413; CHOSSES IN ACTION vol 13 (2009) PARAS 94-95. The restrictions in the Army Act 1955 s 203(1), (2) and the Air Force Act 1955 s 203(1), (2) are disapplied when pension sharing rights are activated under certain types of order: see further SOCIAL SECURITY AND PENSIONS.

12 Army Act 1955 s 203(1); Air Force Act 1955 s 203(1). See para 271 post. The Secretary of State may make regulations permitting the disposal, without requiring probate, to persons appearing to be entitled on the death of a person who has served or is serving in the military or air forces of any sum less than £5,000 arising

from pay or otherwise held under his control: Pensions and Yeomanry Pay Act 1884 s 4; Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548; Army and Air Force (Women's Service) (Adaptation of Enactments) Order 1949, SI 1949/61, art 2, Schedule Pt II; Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539. See also para 266 note 5 post. As to the circumstances in which the Secretary of State would have control of such money see para 220 post. As to the Secretary of State see para 2 ante. The payment of a resettlement grant into court for financial provision on divorce is not permissible: *Walker v Walker* [1983] Fam 68, [1983] 2 All ER 909, CA.

UPDATE

218 Forfeiture of and deductions from pay; assignment

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to forfeitures and deductions, see now the Armed Forces Act 2006 ss 341, 342; and the Armed Forces (Forfeitures and Deductions) Regulations 2009, SI 2009/1109. As to the avoidance of assignments of pay, see s 356.

NOTE 3--Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 repealed: Armed Forces Act 2006 Sch 17.

NOTE 12--Pensions and Yeomanry Pay Act 1884 s 4 further amended: Civil Partnership Act 2004 Sch 26 para 5.

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219. Punishment by fine.

The amount of the fine¹ that may by statute² be imposed by a court-martial on an offender for an offence other than a civil offence³ must not exceed the amount of the offender's pay for 28 days⁴, and for a civil offence must not exceed the maximum fine which may be imposed by a civil court for the offence⁵.

1 As to punishments in service disciplinary proceedings see para 423 et seq post.

2 See under the Army Act 1955 s 71(1)(h) (s 71 substituted by the Armed Forces Act 1971 s 36) and the Air Force Act 1955 s 71(1)(h) (s 71 substituted by the Armed Forces Act 1971 s 36).

3 As to civil offences see para 422 post.

4 Army Act 1955 s 71(5)(a); Air Force Act 1955 s 71(5)(a) (both as substituted (see note 2 supra); and amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 3(1)). For the purposes of the Army Act 1955 s 71(5) (as substituted and amended) or the Air Force Act 1955 s 71(5) (as substituted and amended), a day's pay must be taken to be: (1) subject to head (2) infra, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank: Army Act 1955 s 71(5A); Air Force Act 1955 s 71(5A) (both added by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 3(2)). For these purposes, 'special member' and 'ordinary member' have the same meaning as in the Reserve Forces Act 1996 (see para 251 post): Army Act 1955 s 71(5B); Air Force Act 1955 s 71(5B) (both added by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 3(2)). Where the offence is committed on active service, the maximum fine is 56 days' pay: Army Act 1955 s 71(5)(a); Air Force Act 1955 s 71(5)(a) (both as so substituted and amended). As to active service see para 305 post.

5 See the Army Act 1955 s 71(5)(b); and the Air Force Act 1955 s 71(5)(b) (both as substituted: see note 2 supra).

UPDATE

219 Punishment by fine

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006. As to the maximum amount of fines, see now the Armed Forces Act 2006 s 136.

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(ii) Property

220. Effects of a deceased member of the armed forces left within a prescribed area.

On the death of a person who is subject to military or air force law, all his effects in any camp or quarters or, if outside the United Kingdom, the prescribed area¹, are required to be secured by a committee of adjustment², except in cases prescribed by royal warrant, and an inventory made of them³. The committee must ascertain the amount of specified preferential charges on the deceased's property and provide for their payment⁴. Subject to the prescribed regulations⁵, if these charges are paid or secured in full by any person⁶, the committee must not interfere further in relation to the property of the deceased, except so far as requested to do so by or on behalf of that person, but must forward a report to the Secretary of State⁷. If the charges are not paid or secured within the specified time⁸ the committee must pay them⁹, and in the exercise of its duties the committee has, to the exclusion of all other persons, the same rights and powers as if it had taken out representation¹⁰ to the deceased¹¹. Any surplus must be handed to the paymaster¹² who, if he is acting outside the United Kingdom, may pay any expenses chargeable¹³ to the surplus, and any debts legally payable out of the deceased's personal estate¹⁴. Subject to the making of such payments, any surplus must be paid to the representative¹⁵ of the deceased, if the paymaster knows of any such in the same part of Her Majesty's dominions¹⁶. If he does not know of any such representative, and the surplus does not exceed £5,000, he may pay all or any part of it to any persons known to him in that part of Her Majesty's dominions as appear to be beneficially entitled to the deceased's personal estate¹⁷.

The surplus, or so much of it as is not applied under these provisions, must be remitted to the Secretary of State¹⁸, who must ascertain the residue (that is, the total amount to the credit of the deceased¹⁹) and pay it to any representative of whom he has notice²⁰. Where the residue does not exceed £5,000²¹ and the Secretary of State has no notice of any representative of the deceased, then after the expiration of the time, and the publication of any notice, prescribed by royal warrant he may pay the residue, or any part of it, to any of the persons appearing to be beneficially entitled to the personal estate of the deceased²². He must then apply any part remaining in his hands, and not irrevocably appropriated, in paying any debt of the deceased proved to his satisfaction to have accrued within three years before the death and claimed within two years after the death²³. If any residue remains undisposed of²⁴, a notice²⁵ so stating must be published annually for six years²⁶. If six months after the last publication the residue remains undisposed of, it must be transferred to the Royal Patriotic Fund Corporation, in whose hands it forms (together with all such residues and income and accumulations from them) one fund, under the management of the corporation, and known as the Soldiers' and Airmen's Effects Fund for the benefit of widows, children or near relatives of persons dying at any time who have been soldiers or airmen, with preferential treatment being given to the widows and children of soldiers and airmen married before or during their army or air force service²⁷.

1 The area may be a station, colony, command or other place (Regimental Debts Act 1893 s 1), and is prescribed by royal warrant (see ss 13(1), 29; and note 3 infra). The prescribed area is referred to as 'the regulation area': s 1(1). As to the meaning of 'colony' see para 20 note 4 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 The committee is prescribed by royal warrant: see ibid ss 1, 13, 29; and note 3 infra. The committee, in circumstances laid down by royal warrant, may request an official administrator to act on its behalf, and the

administrator must comply: s 14(2). In that event, he administers any property which comes into his hands in accordance with the Regimental Debts Act 1893 and (subject to it) according to the law regulating his office independently of the Act: s 14(3). The committee may also lodge with him any property secured or collected by it: s 14(2). As to property not collected by it see note 19 infra. The official administrator must not interpose in relation to any property of a deceased person subject to military law except in prescribed cases or unless requested to do so: s 14(1). The expression 'official administrator' now has effect only in a colony and means any public officer in a colony who has by law any powers or duties in relation to the collection or distribution of the estate of any deceased person: s 29.

3 Ibid s 1(1). The Regimental Debts Act 1893 was, with necessary adaptations, applied to the Royal Air Force by the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548, and to the women members of both the regular forces and the regular air force by the Army and Air Force (Women's Service) (Adaptation of Enactments) Order 1949, SI 1949/61. For the meaning of 'regular forces' see para 191 ante. For the meaning of 'regular air force' see para 206 ante. Any provision in an enactment or other instrument defining the purposes for which the Royal Patriotic Fund Corporation (in which is now vested any unappropriated residue of the effects of a deceased person who was subject to military or air force law (see the text and notes 23-27 infra)) may apply any of its property or exercise any of its powers, being a provision which relates in the same way to the naval and military forces, but not to the air forces, of the Crown, is deemed to apply and always to have applied to the air forces as if references in it to the military forces or their members included references to the air forces or their members or the like class of such members: Royal Patriotic Fund Corporation Act 1950 s 2.

Where a person dies subject to military law and no representation is taken out, the Secretary of State may deposit the original will, or declaration of intestacy, inventory of personal property and application thereof, in the places specified by the Regimental Debts Act 1893, where they may be inspected: see s 21. Special provisions apply on the death of an army paymaster: see s 22. As to the Secretary of State see para 2 ante.

4 Ibid s 1(2). The preferential charges comprise: (1) the expenses of any last illness and of the funeral; (2) military debts (ie limited sums due in respect of quarters, regimental accounts and clothing and equipment); (3) if death occurs out of the United Kingdom, servants' wages for not more than two months and household expenses for not more than one month: s 2. In cases of doubt as to preferential charges or their payment, the decision of the Secretary of State is final: s 4. It is the personal property remaining after the payment of these charges which is considered personal estate for the purposes of duty and administration: s 3 (amended by the Finance Act 1975 s 52(2), Sch 13 Pt I). Decorations are not part of the personal estate and must be disposed of according to royal warrant: Regimental Debts Act 1893 s 11 (amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 5(2), Sch 4).

5 Ie prescribed by royal warrant: Regimental Debts Act 1893 ss 13(1), 29. See note 3 supra.

6 A creditor may not pay or secure preferential charges: ibid s 20.

7 Ibid s 5.

8 Ie the time specified by the committee, which must not be longer than the time prescribed by royal warrant: ibid ss 6(1), 13(1), 29.

9 Ibid s 6(1).

10 'Representation' includes probate, letters of administration with or without the will annexed, and, in Scotland, confirmation: ibid s 29. It need not necessarily be taken out at the place where the property comes into the hands of the committee or other person: see s 15.

11 Ibid s 6(5). If the death occurs out of the United Kingdom, the committee (subject to what is prescribed by royal warrant) must, if it appears to it necessary in order to pay the preferential charges, and may in any case, collect all the personal property of the deceased in the prescribed area (s 6(2)), and may convert into money such of this property as does not consist of money (s 6(3)). The person to whom the committee must pay the surplus (ie the paymaster: see the text and note 12 infra) and the Secretary of State have the same power of conversion to money as does the representative of the deceased: s 12. If death occurs out of the United Kingdom the committee may pay any debts of the deceased which appear to it to be legally payable out of the deceased person's estate: s 6(4). See also EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) para 188.

12 Ibid s 6(6). The paymaster is such person as may be prescribed for this purpose: s 6(6).

13 Ie according to royal warrant: see note 3 supra.

14 Regimental Debts Act 1893 s 7(1).

15 Ie any person taking out representation, but not an official administrator (see ibid s 29), or a creditor (see s 20).

16 Ibid s 7(2).

17 Ibid s 7(3) (amended by the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539). This is one of the few cases where payments may be made to persons entitled without a grant of probate and administration. For other cases concerning the armed forces see para 218 note 11 ante; and EXECUTORS AND ADMINISTRATORS.

18 Regimental Debts Act 1893 s 7(4).

19 Ibid s 8(1). The residue includes the remitted surplus, arrears of pay, batta (ie subsistence money), grants, and other allowances: s 8(1). After the committee has lodged the surplus with the paymaster, as regards any property not collected by the committee and not forming part of the surplus or residue an official administrator and any representative of the deceased have the same rights and duties as they would have if the Regimental Debts Act 1893 had not been passed: s 19.

20 Ibid s 8(2). Prior to payment of the residue, the Secretary of State may pay out any preferential charges not hitherto paid: s 8(3). He may, and, if prescribed, must, publish a notice of the amount of the residue, particulars of the property of the deceased and the mode of applying for the residue: s 8(3). A creditor may not claim the residue as a representative: s 20.

21 In such a case representation need be taken out only if the Secretary of State or a royal warrant so requires, and no duty is payable: see ibid ss 9, 16 (amended by the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539).

22 Regimental Debts Act 1893 s 9(1). For this purpose the Secretary of State may deposit the residue in a savings bank: s 9(1).

23 Ibid s 9(2). There is no other manner in which a person may obtain payment out of any residue in the hands of the Secretary of State of any sum due from the deceased: s 9(3).

24 Ie where it exceeds £1,500 so that the procedure prescribed by ibid s 9 is not applicable, or where that procedure, where applicable, leaves the residue or part of it still in the hands of the Secretary of State.

25 Ie as prescribed by royal warrant: see note 3 supra.

26 Regimental Debts Act 1893 s 10(1).

27 Ibid s 10(2); Royal Patriotic Fund Corporation Act 1950 s 1. Such an application does not bar any claim to the residue: Regimental Debts Act 1893 s 10(3). Compliance with the prescribed mode of payment and application discharges the person applying or disposing of the surplus, residue or any of the property from any liability in regard to it: see ss 17, 18. As to the Royal Patriotic Fund Corporation and the Soldiers' and Airmen's Effects Fund see further para 298 post.

UPDATE

220 Effects of a deceased member of the armed forces left within a prescribed area

NOTES 2, 3--In the Regimental Debts Act 1893, for the words 'military law', in each place, substitute 'service law': Armed Forces Act 2006 Sch 16 para 6.

NOTE 3--1950 Act s 2 repealed: Armed Forces (Pensions and Compensation) Act 2004 Sch 3.

TEXT AND NOTE 27--1893 Act s 10(2) and 1950 s 1 amended: Civil Partnership Act 2004 Sch 26 paras 6, 20.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(2) PAY AND PROPERTY/ (ii) Property/221. Application of provisions to deserters and persons mentally disordered.

221. Application of provisions to deserters and persons mentally disordered.

The provisions relating to the disposal of the effects of a deceased person subject to military law¹ apply to any person subject to military or air force law who deserts² or absents himself without leave³ for 21 days, or who, in consequence of a conviction by a court of ordinary criminal jurisdiction, is imprisoned or detained to serve a sentence of three months or more, as if that person were deceased, with the exception that the powers of the committee of adjustment arise and continue, notwithstanding that the preferential charges have been paid or secured⁴, and that the committee is required to dispose of the surplus in the prescribed manner⁵, following which there is no claim by the person whose property has been dealt with or any person claiming through him⁶. The provisions also apply to any person mentally disordered as if he had died at the moment of his disorder being ascertained⁷.

1 In the Regimental Debts Act 1893: see para 220 ante. The provisions of s 23 and s 24 (see *infra*), are applied to the Royal Air Force and the army and air force women's services: see para 220 note 3 ante.

2 In the Regimental Debts Act 1893, 'desert' is defined in s 29 (amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 3, Sch 2 para 3) by reference to the Army Act 1955 s 37(2)(a) (see para 404 post). However, although the Regimental Debts Act 1893 s 29 (as amended), has not been repealed, it is deprived of effect by the substitution for the Army Act 1955 s 37, of a new provision (see the Armed Forces Act 1971 s 11) providing a new definition of 'desert'. It is therefore submitted that in the Regimental Debts Act 1893, 'desert' must now be given its ordinary meaning as understood in service life. For the elements of the offence of desertion as it now exists under the Army Act 1955 s 37 (in its present form) see para 404 post.

3 As to absence without leave see para 404 post.

4 Regimental Debts Act 1893 s 23(1) (amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 5(2), Sch 4; and the Criminal Law Act 1967 s 10(1), Sch 2 para 10). The Regimental Debts Act 1893 refers to a person who is sentenced to death, but such a sentence is no longer available in English law. A sentence of death can no longer be passed by a United Kingdom service court: Human Rights Act 1998 s 21(5) (amended by the Armed Forces Act 2001 s 34, Sch 6 Pt 4).

5 In the manner prescribed by royal warrant: Regimental Debts Act 1893 ss 13(1), 23(2), 29.

6 *Ibid* s 23(2).

7 See *ibid* s 24. The husband, wife, relative or person undertaking the care of the person mentally disordered, or his property, may pay the preferential charges, and the surplus will be applied for the benefit of the person mentally disordered: s 24(a), (b); Army and Air Force (Women's Service) (Adaptation of Enactments) Order 1949, SI 1949/61, art 2, Schedule Pt II.

UPDATE

221 Application of provisions to deserters and persons mentally disordered

TEXT AND NOTES--Regulations may provide that any provision of the Regimental Debts Act 1893 does not apply, or applies with prescribed modifications, in relation to a relevant person: s 29A(1) (s 29A added by the Armed Forces Act 2006 Sch 16 para 9). For these purposes 'relevant person' means a person subject to service law who is not a member of Her Majesty's military forces: Regimental Debts Act 1893 s 29A(2). 'Subject to service law' has the same meaning as in the Armed Forces Act 2006 (see

PARA 303-313): Regimental Debts Act 1893 s 29 (definition added by the Armed Forces Act 2006 Sch 16 para 8).

NOTE 2--Definition of 'desert' amended to mean an offence under the Armed Forces Act 2006 s 8 (see PARA 404): Sch 16 para 8.

NOTE 4--Regimental Debts Act 1893 s 23(1) further amended to remove reference to a person who is sentenced to death: Armed Forces Act 2006 Sch 16 para 7, Sch 17.
Human Rights Act 1998 s 21(5) repealed: Armed Forces Act 2006 Sch 17.

NOTE 7--Regimental Debts Act 1893 s 24 further amended: Civil Partnership Act 2004 Sch 26 para 7.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(2) PAY AND PROPERTY/ (ii) Property/222. Regimental charitable funds.

222. Regimental charitable funds.

Regimental charitable funds which at one time were invested in the names of officers of regiments were transferred by statute¹ to the Bank of England². The Secretary of State may at any time, with Treasury approval, pay to a holding trustee, that is a nominated corporation, a sum equal to the amount standing to the credit of any such fund³. The trustee must then invest the sum in a manner authorised by the enactments relating to trusts⁴ and pay the income from the investment to the commanding officer of the regiment or unit in connection with which the fund exists⁵. The commanding officer holds this income on trust to apply it for such charitable purposes connected with non-commissioned officers and soldiers as the Secretary of State may by order specify, having regard to the purpose for which the fund was applicable immediately before the making of the order⁶. The Secretary of State may make regulations as to the accounting and other duties of commanding officers in connection with the holding and application of such money⁷.

¹ See 12 & 13 Vict c 71 (Regimental benefit societies) (1849). This Act was repealed by the Military Savings Banks Act 1859 s 1 (repealed).

² See 12 & 13 Vict c 71 (Regimental benefit societies) (1849) s 4 (repealed). As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

³ Regimental Charitable Funds Act 1935 s 1(1). This Act has not been applied to the Royal Air Force. As to the provision of money to enable the payment to the trustee to be made see s 1(2). As to the Secretary of State see para 2 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

⁴ As to the investment of trust funds see TRUSTS vol 48 (2007 Reissue) para 1005 et seq.

⁵ Regimental Charitable Funds Act 1935 s 2(1).

⁶ Ibid s 2(2). If it becomes impracticable to carry into effect such a trust, the Charity Commissioners have concurrent jurisdiction with the court to make schemes: see the Charities Act 1993 Pt IV (ss 13-35); and CHARITIES vol 8 (2010) PARA 187 et seq.

⁷ Regimental Charitable Funds Act 1935 s 2(2). At the date at which this volume states the law no such regulations had been made.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(i) Introduction/223. The reserve forces.

(3) RESERVE FORCES

(i) Introduction

223. The reserve forces.

The reserve forces are:

- 46 (1) the Royal Fleet Reserve, the Royal Naval Reserve and the Royal Marines Reserve ('the reserve naval and marine forces')¹;
- 47 (2) the Army Reserve and the Territorial Army ('the reserve land forces')²; and
- 48 (3) the Air Force Reserve and the Royal Auxiliary Air Force ('the reserve air forces')³.

Each force consists of officers and men⁴. Parliament must authorise a maximum number of officers and a maximum number of men for each of the reserve forces and the numbers of officers and men of a reserve force must not exceed the numbers for the time being authorised for the force⁵.

Her Majesty may make orders and the Defence Council may make regulations concerning any matter relating to the reserve forces⁶.

Any of the reserve forces may, by or in accordance with orders or regulations, be formed into such groupings as may be specified⁷. Each reserve force may be served by a permanent staff consisting of persons who are members of that force or members of the regular services⁸.

Orders or regulations may make provision with respect to pay, bounty and allowances for members of the reserve forces⁹ and for the payment of pensions, allowances and gratuities by the Secretary of State to or in respect of any persons who are or have been members of the reserve forces and for the making of payments towards the provision of pensions, allowances and gratuities to or in respect of any such persons¹⁰.

Units or bodies of reserve forces may be disbanded by royal warrant, and provision is made as to the succession to the property of disbanded units¹¹.

Her Majesty may by Order in Council direct that any of the provisions of the Reserve Forces Act 1996 are to extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to the Channel Islands and the Isle of Man¹².

1 Reserve Forces Act 1996 s 1(2)(a).

2 Ibid s 1(2)(b). The Territorial Army and the Royal Auxiliary Air Force are constituted and organised in pursuance of regulations deemed to have effect as if made under the Reserve Forces Act 1980 (see s 157(1), Sch 8 para 1 (Sch 8 para 1 repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11); and the Interpretation Act 1978 s 17(2)(b)), which are not statutory instruments and are not recorded in this work. The mode of enlistment and attestation and provisions relating to the validity of each are in general the same as for the recruits of the regular forces or regular air force: see the Army Act 1955 ss 2, 18, 19, 198(2), (3), Sch 1, and the corresponding provisions of the Air Force Act 1955; and paras 197, 209 ante, 413 post.

3 Reserve Forces Act 1996 s 1(2)(c). See note 2 supra.

4 Ibid s 2(1). The men of the Royal Fleet Reserve, the Army Reserve or the Air Force Reserve (referred to as 'the ex-regular reserve forces') may only be: (1) men transferred to that force under the Army Act 1955, the Air Force Act 1955 or regulations under the Armed Forces Act 1966, as the case may be; or (2) men enlisted or re-engaged in that force: Reserve Forces Act 1996 s 2(2). The men of the Royal Naval Reserve, the Royal Marines Reserve, the Territorial Army or the Royal Auxiliary Air Force (referred to as 'the volunteer reserve forces') may only be men enlisted or re-engaged in that force: s 2(3). In the Reserve Forces Act 1996, any reference (however expressed) to a man of any of the reserve forces is a reference to a person of either sex who is a member of that force and is of or below the rate or rank of warrant officer: s 2(4).

5 Ibid s 3(1). The special members of a reserve force must not be reckoned in the numbers of officers and men for the time being authorised for the force under this provision: s 3(2).

6 See ibid s 4. Orders and regulations so made are not statutory instruments and are not recorded in this work. As to offences against orders and regulations under s 4 see s 95; and para 248 post.

7 Ibid s 5(1). Such orders or regulations may, in particular, include provision with respect to: (1) the formation of the reserve naval or marine forces into divisions, classes or other naval or marine bodies; (2) the formation of the reserve land forces into corps, regiments, battalions or other military bodies; (3) the formation of the reserve air forces into wings, squadrons or other air force bodies; and (4) the formation of any such bodies as are mentioned in heads (1)-(3) supra into higher formations, either alone or jointly with any other part of Her Majesty's armed forces: s 5(2).

8 Ibid s 6(1). Orders or regulations under s 4 may make provision with respect to the duties of, and any other matter relating to, the permanent staff of any reserve force: s 6(2). 'Regular services' means the Royal Navy, the Royal Marines, the regular army or the regular air force: s 127(1).

9 Ibid s 7(1). Such orders or regulations may in particular make provision as to the manner in which payments of pay, bounty and allowances are made; and may impose conditions or restrictions (including deductions) on the making of such payments: s 7(2). In relation to prescribed members of the reserve naval and marine forces, the Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 s 1(1), (2) (see para 76 ante) applies in relation to the restrictions which may be included in orders and regulations by virtue of the Reserve Forces Act 1996 s 7 as it applies in relation to the restrictions which may be included in an Order in Council regulating naval and marine pay: s 7(3).

10 Ibid s 8(1). Orders or regulations may also make provision for the payment of, or the making of payments towards the provision of, pensions, allowances and gratuities in respect of the death or disability of a person attributable to his service as a member of a reserve force: s 8(2). The provision made under s 8 may include provision for or towards the payment of lump sums instead of, or as well as, pensions: s 8(3).

11 See ibid s 120, Sch 5.

12 Ibid s 132(3).

UPDATE

223 The reserve forces

NOTE 4--Reserve Forces Act 1996 s 2(2) amended: Armed Forces Act 2006 Sch 14 para 25.

TEXT AND NOTE 6--Reserve Forces Act 1996 s 4 amended: Armed Forces Act 2006 Sch 14 para 26.

TEXT AND NOTE 9--Reserve Forces Act 1996 s 7 repealed: Armed Forces Act 2006 Sch 14 para 27. Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(i) Introduction/224. The two statutory schemes.

224. The two statutory schemes.

The statutory provisions governing the reserve forces¹ are principally contained in the Reserve Forces Act 1996, which revokes and replaces the former statutory scheme contained in the Reserve Forces Act 1980². The new scheme governs the membership of all members of the reserve forces except in so far as it relates to training and call out for permanent service, in which event it only applies to reservists who became members of the regular or reserve forces on or after 1 April 1997³ and those pre-existing members who have elected to be so governed⁴. There is therefore a transitional class of reservists to whom the provisions of the Reserve Forces Act 1980 concerned with training and call out continue to apply, and provision has accordingly been made for such parts of that Act as deal with those matters to continue to have effect, in a form modified to align them so far as possible with the provisions of the Reserve Forces Act 1996, in relation to such persons⁵.

1 As to what constitutes the reserve forces see para 223 ante.

2 The Reserve Forces Act 1980, except ss 48, 55, 130-138, 140, 151, 156, 157, 158, was repealed by the Reserve Forces Act 1996 s 131(2), Sch 11. These repeals mainly took effect, subject to savings for reservists not subject to the Reserve Forces Act 1996 (see the text and note 5 supra) on 1 April 1997: see the Reserve Forces Act 1996 (Commencement No 1) Order 1997, SI 1997/305.

3 The date on which the substantive provisions of the Reserve Forces Act 1996 were brought into force by the Reserve Forces Act 1996 (Commencement No 1) Order 1997, SI 1997/305. The Reserve Forces Act 1996 Sch 9 refers to service 'on or before the appointed day' for the purposes of determining whether a person may remain subject to the surviving provisions of the Reserve Forces Act 1980 (see the text and note 5 infra) but, since no such day has been appointed, it may be assumed for these purposes that the relevant date for the application or otherwise of the new provisions is 1 April 1997.

4 See the Reserve Forces Act 1996 ss 1(1), 129, Sch 9.

5 The repeals of the Reserve Forces Act 1980 ss 10, 11, 13(2)-(4), 16, 17, 18(1), (2), 19, 20(1), 21, 22, 24-26, 28, 29, 30(1), (2), 31, 32, 34(1)-(3), 35, 36, 38, 39(1)(a), (b), 40-42, 44, 47, 50, 57, 58, 63, 67, 69, 70, 83(1), (2), 87, 93, 100, 101, 120, 139(1), 141-144, 145(1)(b), (2), 146(1)(b), (2), 154(1), 155, Sch 2, Sch 8 para 1, 4, 5(1), (3), 6-8, 10-15, 16(2), (3), (5)-(10), 17, 19, 20, were not brought into force on 1 April 1997: see the Reserve Forces Act 1996 (Commencement No 1) Order 1997, SI 1997/305. At the date at which this volume states the law no further orders had been made bringing these repeals into force. The Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, makes amendments to the saved provisions to bring the procedures under the Reserve Forces Act 1980 and the Reserve Forces Act 1996 into line with one another. As to the statutory provisions relating to training and call out for permanent service see para 232 et seq post.

The corollary of the saving for existing members of the regular or reserve forces is that nothing in the Reserve Forces Act 1980 may apply to a member of the reserve to whom that Act could not have applied prior to its replacement with the Reserve Forces Act 1996: see s 129(2), (3).

UPDATE

224 The two statutory schemes

NOTE 5--Reserve Forces Act 1980 ss 24, 25, 44, Sch 8 paras 5(3), 10, 16(2), (5), 19 repealed: Armed Forces Act 2006 Sch 14 paras 8, 9, 16, 24.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(i) Introduction/225. Authorisation and control.

225. Authorisation and control.

The maintenance of the reserve forces¹ is authorised by the Reserve Forces Act 1996² and, subject to the provisions of that Act, orders and regulations made or having effect thereunder may make provision with respect to the government and discipline of the reserves and all other matters relating thereto³. When in service, officers and men of the reserve forces are generally also subject to military or, as the case may be, air force law⁴.

Until a day to be appointed, any power or jurisdiction vested in the holder of a military office in relation to the Army Reserve may be exercised by any other person authorised in that behalf according to service custom⁵, and any power or jurisdiction vested in the holder of an air force office in relation to the Air Force Reserve may be similarly exercised⁶. Where a military or air force authority is authorised to make an order, any officer authorised by that authority may make or signify such order under his own hand⁷.

1 As to what constitutes the reserve forces see para 223 ante.

2 See the Reserve Forces Act 1996 s 1(1). Although by virtue of s 1(1) the reserve forces are maintained in accordance with the provisions of the Reserve Forces Act 1996, the service of certain reservists remains governed by the Reserve Forces Act 1980 (much of which was repealed and replaced by the Reserve Forces Act 1996): see further para 224 ante. Both the Reserve Forces Act 1980 and the Reserve Forces Act apply to women as they apply to men: see the Reserve Forces Act 1980 s 156(3) (amended by the Armed Forces Act 1981 s 20(3)); and the Reserve Forces Act 1996 s 2(4).

3 See *ibid* s 4. Such regulations are not statutory instruments and are not recorded in this work.

4 See the Army Act 1955 s 205 (as amended); the Air Force Act 1955 s 205 (as amended); and para 307 et seq post.

5 See the Reserve Forces Act 1980 s 63(1) (ss 63, 67 repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11).

6 See the Reserve Forces Act 1980 s 67(1) (prospectively repealed: see note 5 *supra*).

7 *Ibid* ss 63(2), 67(2) (prospectively repealed: see note 5 *supra*). Any such order purporting to be signed by an officer appearing from it to be so authorised is evidence of his being so authorised: ss 63(2), 67(2) (prospectively repealed: see note 5 *supra*).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(i) Introduction/226. Reserve associations.

226. Reserve associations.

A territorial, auxiliary and volunteer reserve association may be established for any area in the United Kingdom¹ determined by the Defence Council². An association must be constituted, and its members must be appointed and hold office, in accordance with a scheme made by the Defence Council³. It is the duty of an association to make itself acquainted with, and conform to, the plan of the Defence Council for the organisation within the area for which the association is established of: (1) Her Majesty's land and air forces; and (2) the reserve naval and marine forces in so far as the plan relates to matters with respect to which functions are conferred on the association⁴. It is also the duty of an association to give advice and assistance in relation to the military and air force resources and capabilities of the area for which the association is established to the Defence Council and to such officers as the Defence Council may direct⁵. Associations have such powers and duties connected with the organisation and administration of: (a) Her Majesty's land and air forces; (b) the reserve naval and marine forces; or (c) the Army Cadet Force, the Air Training Corps, the Combined Cadet Force and the Sea Cadet Corps, as may for the time being be transferred or assigned to it by order of Her Majesty signified under the hand of the Secretary of State or, subject to such an order, by regulations⁶. Provision is made as to the expenses of associations⁷ and with respect to their accounts⁸.

Two or more associations may from time to time join in appointing from among their respective members a joint committee for any purpose in respect of which they are jointly interested⁹.

Power is conferred on the Defence Council to make regulations in connection with associations¹⁰. The Secretary of State may make regulations governing the payment of compensation to any persons employed by an association or the Council of Territorial, Auxiliary and Volunteer Reserve Associations, who, in his opinion, cease to be employed or suffer a reduction in pay following the winding-up of an association, or a change in its activity¹¹. The Defence Council may make an order providing for the winding up of an association¹².

1 This includes the Channel Island and the Isle of Man: Reserve Forces Act 1996 s 110(4). As to the meaning of 'United Kingdom' generally see para 20 note 1 ante.

2 Ibid s 110(1). If the Defence Council alters the areas into which the United Kingdom has for the time being been divided for the purposes of s 110(1), it may by order alter the area for which an existing association is established: s 110(2). An order under s 110(2) may make supplemental, incidental and transitional provision (including provision as respects the transfer of property, rights and liabilities and financial adjustments); and it must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 110(3). See further the Reserve Forces Act 1996 (Reserve Associations) Order 2000, SI 2000/2379. As to the Defence Council see para 2 ante.

3 Reserve Forces Act 1996 s 111(1). As to provisions of schemes for the constitution of associations see s 111(2), Sch 4. The Secretary of State may by order make such modifications (whether by way of addition, substitution or otherwise) to Sch 4 as he considers appropriate: s 111(3). An order under s 111(3) may contain such supplemental, incidental and transitional provision as the Secretary of State considers appropriate; and must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 111(4). As to the Secretary of State see para 2 ante.

4 Ie under ibid s 113(1): s 112(1).

5 Ibid s 112(2). The advice and assistance which an association may be required to give under s 112(2) includes advice or assistance relating to any matter in connection with: (1) local support for, or for the activities of, Her Majesty's land and air forces, the reserve naval and marine forces and the cadet forces mentioned in s 113(1)(c) (see head (c) in the text); and (2) the availability of financial and material assistance (including land

and buildings) for any activity or requirement of those forces or for any other defence purpose, which the association is requested to provide by the Defence Council or any officer mentioned in s 112(2): s 112(3).

6 Ibid s 113(1). As to the powers and duties which may be so transferred or assigned see s 113(2), (3). An association must not have any powers of command or training over any part of Her Majesty's forces: s 113(4). The members of an association must not be under any pecuniary liability for any act done by them in their capacity as members in carrying out these provisions: s 113(5).

7 Ibid s 114. The proceeds of the trophy tax raised in the City of London and collected by inclusion in the general rate may be applied by the Commissioners of Lieutenancy for the City of London (as to whom see the Lieutenancies Act 1997 s 7(1), (2); and LOCAL GOVERNMENT vol 69 (2009) PARA 116), if they see fit, for any of the purposes of a territorial and volunteer reserve association established for an area including the City of London: s 7(4), Sch 1. With the consent of the Secretary of State and subject to such conditions, if any, as he may think fit to impose, an association may borrow money for the acquisition of land: Military Lands Act 1892 s 5. The Defence Council has a general power to make regulations for the purpose, inter alia, of authorising and regulating the borrowing of money by associations: Reserve Forces Act 1996 s 117(1)(c). An association may also, subject to such consent and conditions, borrow money for the purchase, erection, construction, alteration or enlargement of any building or permanent work for the purposes of the association, or for the repayment of a loan used for any such purpose: Military Lands Act 1897 s 1. Where land is held on behalf of an association by a county or district council under the Military Lands Act 1892 s 1(3), and leased to the association, the association may borrow on the security of any such lease: Military Lands Act 1900 s 1(1), (2). As to the acquisition of land by associations, and as to the application of the Military Lands Acts 1892 to 1903 to the Royal Auxiliary Air Force, see para 119 ante.

8 Reserve Forces Act 1996 s 115.

9 Ibid s 116(1). As to joint committees of associations see further s 116(2)-(5).

10 Ibid s 117. Regulations made for the purposes of s 114 or s 115 (see the text to notes 7-8 supra) are subject to the Treasury's consent: s 117(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

11 Ibid s 118.

12 Ibid s 119.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(i) Introduction/227. Former members of Ulster Defence Regiment serving in the Royal Irish Regiment.

227. Former members of Ulster Defence Regiment serving in the Royal Irish Regiment.

The Ulster Defence Regiment¹ was amalgamated with the Royal Irish Regiment on its abolition on 1 July 1992². Any person who was a member of the Ulster Defence Regiment on that date ceased to be a member at that time and, if his term of service with the regiment would have continued after that date, he continued to be a member of the armed forces until the ending of the term of service current at that time³. The conditions for the acceptance of persons as members of the Royal Irish Regiment and their conditions of service, and provision as to the organisation, administration, government and duties of the regiment, are contained in regulations⁴. A number of statutory provisions governing the service of members of the former Ulster Defence Regiment who have continued to serve as members of the Royal Irish Regiment continue to have effect⁵.

1 The Ulster Defence Regiment was originally raised by virtue of the Ulster Defence Regiment Act 1969 s 1 (repealed) and was subsequently maintained by virtue of the Reserve Forces Act 1980 (see ss 7, 139(1), (2) (s 7 repealed by the Army Act 1992 s 3(1); and the Reserve Forces Act 1980 s 139(1), (2) repealed, as from a day to be appointed in the case of s 139(1), by the Reserve Forces Act 1996 s 131(2), Sch 11). It formed part of the military armed forces of the Crown and was governed by the Defence Council: Reserve Forces Act 1980 s 141 (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 Sch 11). The regiment consisted of those persons who volunteered and were accepted for service in it: see the Reserve Forces Act 1980 s 7(2) (repealed). The use of the word 'persons' signifies that the members of the regiment included both men and women; it was substituted for the word 'men' used in the Ulster Defence Regiment Act 1969 s 1(1) (repealed), by the Ulster Defence Regiment Act 1973 s 1(1) (repealed). As to the Defence Council see para 2 ante.

2 Ie the date on which the Army Act 1992, which provided for the abolition of the Ulster Defence Regiment and the transfer of its members to the Royal Irish Regiment, was brought into force: see s 5.

3 See *ibid* s 1(1). The conditions of service of a such a person are the same after 1 July 1992 as they were before that time, except that they may not include conditions restricting to Northern Ireland any requirement as to training: s 1(2).

4 Ie regulations made by Her Majesty pursuant to the Reserve Forces Act 1980 s 140 (modified by the Army Act 1992 s 3(2)). Such regulations are not statutory instruments and are not recorded in this work. Regulations may not require members to give whole-time service except during any period when any part of the regiment is called out for service or undergoing training, and may not require members to serve or train outside Northern Ireland: Reserve Forces Act 1980 s 140(2).

5 See *ibid* ss 10(5), 24, 25, 44, 139(1), 141-144 (modified by the Army Act 1992 s 3(2); and prospectively repealed by the Reserve Forces Act 1996 Sch 11). These provisions are principally concerned with call out for service (see para 232 *et seq post*) and training (see para 241 *et seq post*), re-engagement and resignation, status and discipline. At the date at which this volume states the law no day had been appointed for the repeal of these provisions.

UPDATE

227 Former members of Ulster Defence Regiment serving in the Royal Irish Regiment

NOTE 1--Reserve Forces Act 1980 ss 139, 141 repealed: Armed Forces Act 2006 Sch 17.

NOTE 4--Reserve Forces Act 1980 s 140 amended: Armed Forces Act 2006 Sch 14 para 19.

TEXT AND NOTE 5--Reserve Forces Act 1980 ss 10(5), 24, 25, 44, 139, 141-144 now repealed: Armed Forces Act 2006 Sch 14 paras 1, 8, 9, 16, 18, 20.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/ (ii) Transfer, Attachment, Enlistment and Discharge/228. Transfer and attachment.

(ii) Transfer, Attachment, Enlistment and Discharge

228. Transfer and attachment.

Men may enter the Army or Air Force Reserve by transfer from the regular forces or the regular air force, as the case may be¹: it is no longer possible for a man who has never served in the regular forces to enlist into the Army Reserve². A man who is transferred from the regular forces to the Army Reserve serves in the reserve for the remainder of the term for which he is engaged³.

An officer of any reserve of army officers, or a man of the Army Reserve, may be attached temporarily to any of Her Majesty's naval or air forces⁴, and an officer of any reserve of air force officers, or a man of the Air Force Reserve, may be attached temporarily to any of Her Majesty's naval or military forces⁵, whether or not in any such case the person is subject to military or air force law, as the case may be, but if he is not so subject the attachment must be with his consent⁶.

1 See the Army Act 1955 s 12; and the Air Force Act 1955 s 12. Transfer may take place on the completion of the period of army or air force service required by a man's terms of engagement, or at one of the points permitted by regulations: see the Army Terms of Service Regulations 1992, SI 1992/1365; the Royal Air Force Terms of Service Regulations 1985, SI 1985/1820; and paras 198, 200, 210-211 ante. A soldier of the regular forces or airman of the regular air force serving outside the United Kingdom may, at his own request, be transferred to the reserve without being required to return to the United Kingdom: see the Army Act 1955 s 12(2) proviso; the Air Force Act 1955 s 12(2) proviso; and para 204 note 10 ante. As to transfers to the Army Reserve see para 200; and as to transfers to the Air Force Reserve see para 211 ante. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

2 Such enlistment was formerly possible under the Army Reserve Act 1950 s 2 (repealed), which provided for the enlistment of men who had never served in the regular forces into the army reserve for service as militiamen, but this form of service has now been abolished, and all militiamen serving on 1 April 1967 were transferred to the Territorial Army.

3 Ie, if he enlisted for a term which was to consist partly of army service and partly of service with the reserve, he will serve with the reserve for the part of his term for which he engaged to serve in it; and if he transfers to the reserve at one of the points at which this is permitted by the Army Terms of Service Regulations 1992, SI 1992/1365, he will serve in it for the unexpired portion of the engagement which he undertook when he enlisted in the regular forces: see reg 3(3) (as amended), reg 5 (as amended), reg 6 (as substituted); and paras 200, 210 ante.

4 Army Act 1955 s 211(8) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 7).

5 Air Force Act 1955 s 210(8) (substituted by the Reserve Forces Act 1996 Sch 10 para 11).

6 Army Act 1955 s 211(8) (as substituted: see note 4 supra); Air Force Act 1955 s 210(8) (as substituted: see note 5 supra).

UPDATE

228 Transfer and attachment

NOTE 1--SI 1985/1820 replaced by Royal Air Force Terms of Service Regulations 2007, SI 2007/650 (amended by SI 2009/1089).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/ (ii) Transfer, Attachment, Enlistment and Discharge/229. Enlistment and conditions of service.

229. Enlistment and conditions of service.

An enlisting officer¹ may enlist as men in any reserve force such persons as he considers suitable². Orders or regulations³ may provide for the enlistment in any reserve force of persons who are not British citizens or who reside outside the United Kingdom⁴. A man of a reserve force may be re-engaged for such period, beginning immediately after the end of his current term of service, as may be prescribed⁵. Orders and regulations may make provision as to the corps, units or bodies into which persons enlisting in a reserve land or air force may be enlisted⁶. Provision is made with respect to the transfer of men between reserve forces⁷.

The Defence Council may at any time discharge any man of any of the reserve forces⁸. A man discharged by an authorised officer may appeal to the Defence Council, who may give such directions in his case (including a direction annulling the discharge) as it considers appropriate⁹. A commanding officer may discharge any man of a reserve force under his command, in such manner and on such grounds as may be prescribed¹⁰. A man discharged by his commanding officer may appeal to the Defence Council, who may give such directions in his case (including a direction annulling the discharge) as it considers appropriate¹¹. Any man of a reserve force is (subject to the provisions of the Reserve Forces Act 1996) entitled to be discharged on the expiry of his current term of service¹². Any enlisted man of a reserve force is (subject to the provisions of the Reserve Forces Act 1996) entitled to be discharged: (1) before the end of his current term of service, on complying with specified conditions¹³; and (2) in such other circumstances as may be prescribed¹⁴. A man of a reserve force who becomes entitled to be discharged will be discharged in such manner as may be prescribed with all convenient speed (and will continue as a man of that force until actually discharged)¹⁵. Discharge may be postponed¹⁶. Provision is also made in relation to the rights of men on being discharged¹⁷.

Supplementary provision with respect to enlistment and conditions of service is made¹⁸.

1 In the Reserve Forces Act 1996 Pt II (ss 9-21), 'enlisting officer' means: (1) a lord-lieutenant or deputy lieutenant holding office under the Lieutenancies Act 1997; (2) an officer of the regular services or of any reserve force; (3) any consul-general, consul or vice consul or any other person duly exercising the functions of a British consul in any place outside the United Kingdom: Reserve Forces Act 1996 s 9(2) (amended by the Lieutenancies Act 1997 s 8(2)). For the meaning of 'regular services' see the Reserve Forces Act 1996 s 127(1). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 Reserve Forces Act 1996 s 9(1). As to what constitutes the reserve forces see para 223 ante. A recruit may not be enlisted in any country or territory outside the United Kingdom which is specified for the purpose by Her Majesty by Order in Council: s 9(3). Any reference to men enlisted in a reserve force, so far as relating to any of the reserve naval and marine forces, is a reference to men entered for service in that force: s 9(5). For further provision as to the enlistment of men in the reserve forces see s 9(4), Sch 1.

3 Ie under *ibid* s 4 (see para 223 ante).

4 *Ibid* s 10(1). A person who is not a British citizen or who resides outside the United Kingdom may not be enlisted in a reserve force unless his enlistment is permitted by provision made for the purposes of s 10(1): s 10(2). As to British citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM.

5 *Ibid* s 11(1). A man wishing to re-engage: (1) must do so before being discharged, but not more than 12 months before the end of his current term of service; and (2) on that re-engagement must make such declaration as may be prescribed before an enlisting officer: s 11(2). A man who has re-engaged under s 11 may re-engage on a second or subsequent occasion: s 11(3).

6 Ibid s 12(1). Subject to any restriction of choice imposed by or in accordance with orders or regulations under s 4 (see para 223 ante): (1) a man of the Territorial Army must be enlisted for service in such corps and posted to such unit as he may select; (2) a man of the Royal Auxiliary Air Force must be enlisted for service in such unit as he may select; and (3) a man enlisted in the Army Reserve or the Air Force Reserve must be enlisted for service in such military body or air force body (as the case may be) as he may select: s 12(2). A man of the Territorial Army may not (after his enlistment) be transferred to another corps, or posted or attached to any unit, without his consent: s 12(3). A man of the Royal Auxiliary Air Force may not (after his enlistment) be posted or attached to any unit without his consent: s 12(4). A man of the Army Reserve or Air Force Reserve may not (after his enlistment in or transfer to that force) be appointed, posted, transferred or attached to any military body or air force body without his consent: s 12(5). The provisions of s 12(3), (4), (5) do not apply to a man of a reserve force while he is in permanent service: s 12(6).

7 Ibid s 13.

8 Ibid s 14(1). This power may also be exercised by any officer authorised to do so by or in accordance with directions of the Defence Council: s 14(2). As to the Defence Council see para 2 ante.

9 Ibid s 14(3).

10 Ibid s 15(1).

11 Ibid s 15(2).

12 Ibid s 16(1).

13 Ibid s 16(2)(a). The conditions for entitlement to discharge under s 16(2)(a) are that:

18 (1) the man concerned gives to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged; and

19 (2) delivers up in good order, fair wear and tear excepted, all arms, clothing and other public property issued to him, or, in cases where for any good or sufficient cause the delivery of that property is impossible, paying its value,

but his commanding officer may, if it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, dispense either wholly or in part with either or both of the above conditions: s 16(4).

14 Ibid s 16(2)(b). Section 16(2) will also apply to any man of a reserve force who re-engages in the force, but in the case of a man who: (1) is serving on transfer to the reserve from the regular services; and (2) re-engages before the end of his term of compulsory service, s 16(2)(a) (see head (1) in the text) will not apply until after the end of his term of compulsory service: s 16(3).

15 Ibid s 16(5).

16 Ibid s 17.

17 Ibid s 18.

18 See ibid s 19 (orders and regulations as to enlistment etc), s 20 (command posting etc of men in permanent service), s 21 (service of marines in the Royal Fleet Reserve).

UPDATE

229 Enlistment and conditions of service

NOTE 1--Definition of 'regular services' amended: Armed Forces Act 2006 Sch 14 para 53.

NOTE 2--Reserve Forces Act 1996 s 9(5) repealed, Sch 1 amended: Armed Forces Act 2006 Sch 14 para 54, Sch 17.

TEXT AND NOTE 7--Reserve Forces Act 1996 s 13 amended: Armed Forces Act 2006 Sch 14 para 28.

TEXT AND NOTE 10--Reserve Forces Act 1996 s 15(1) amended: Armed Forces Act 2006 Sch 14 para 29.

NOTE 10--The officer who is the 'commanding officer' of a person for the purposes of any provision of the Reserve Forces Act 1996 is to be determined by or under regulations made by the defence council under this provision: s 127(3) (added by the Armed Forces Act 2006 Sch 14 para 53).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/ (ii) Transfer, Attachment, Enlistment and Discharge/230. Attachment of officers of Territorial Army and Royal Auxiliary Air Force to other services.

230. Attachment of officers of Territorial Army and Royal Auxiliary Air Force to other services.

While an officer holding a commission in the Territorial Army, the Royal Auxiliary Air Force or the Royal Auxiliary Air Force General List, or a warrant officer, non-commissioned officer or man of the Territorial Army or the Royal Auxiliary Air Force, is subject to military or air force law¹, he may be attached temporarily, without his consent, to any of Her Majesty's forces other than those with which he is serving². When he is not so subject, however, he may not be so attached without his consent³.

1 As to when such officers and men are subject to military or air force law see paras 307-308 post.

2 Army Act 1955 s 211(8) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 7); Air Force Act 1955 s 210(8) (substituted by the Reserve Forces Act 1996 Sch 10 para 11).

3 Army Act 1955 s 211(8); Air Force Act 1955 s 210(8) (both as substituted: see note 2 supra).

UPDATE

230 Attachment of officers of Territorial Army and Royal Auxiliary Air Force to other services

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/ (ii) Transfer, Attachment, Enlistment and Discharge/231. Postponement of discharge of members of the Territorial Army and the Royal Auxiliary Air Force.

231. Postponement of discharge of members of the Territorial Army and the Royal Auxiliary Air Force.

Under the Reserve Forces Act 1980¹, when the time at which a man of the Territorial Army or the Royal Auxiliary Air Force would otherwise be entitled to be discharged occurs during a period of emergency², he may be required to prolong his service for such further term, not exceeding 12 months, as the Defence Council, or an officer designated by it, may order³. Further, when the time at which a man of the Territorial Army would otherwise be entitled to be discharged occurs while he is called out for service because warlike operations are in preparation or progress⁴, he may be required to continue in service for such further period as the Defence Council, or an officer designated by it, may order⁵.

A man of the Territorial Army or the Royal Auxiliary Air Force who is called out for permanent service⁶ is liable to serve until his services are no longer required, or until the expiry of his term of service in that army or force, whichever first occurs⁷.

1 The Reserve Forces Act 1980 ss 13(2)-(4), 100, 101 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the Territorial Army or the Royal Auxiliary Air Force who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed. In order to facilitate the simultaneous operation of the two statutory schemes, the Reserve Forces Act 1980 ss 100, 101 are amended, pending the coming into force of their repeal, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, reg 24.

2 'Period of emergency' means, in relation to a man of the Territorial Army, a period while an order is in force ordering the Army Reserve to be called out for permanent service on account of the imminence of national danger or of a great emergency having arisen (ie under the Reserve Forces Act 1996 s 52(1)(a): see paras 26 ante, 232 post) (Reserve Forces Act 1980 s 100(3)(a) (as amended and prospectively repealed: see note 1 supra)); and also, in relation to a man who enlisted or re-engaged in the Territorial Army on or after 1 April 1967, a period while that man is called out for home defence service (s 101(2) (prospectively repealed: see note 1 supra)). In relation to a man of the Royal Auxiliary Air Force, 'period of emergency' means a period while an order is in force ordering the Air Force Reserve to be called out for permanent service on account of the imminence of national danger or of a great emergency having arisen or while the man in question is called out for home defence service (s 100(3)(b) (as amended and prospectively repealed: see note 1 supra)). A man of the Territorial Army who is liable for call out when warlike operations are in preparation or progress is not entitled to be discharged before the end of his current term of service under the Reserve Forces Act 1996 s 16(2)(a) (see para 229 ante) while an order is in force ordering such a call out: Reserve Forces Act 1980 s 101(1) (as amended and prospectively repealed: see note 1 supra). As to postponement of discharge see para 231 post. As to call out generally see para 232 et seq post.

3 Reserve Forces Act 1980 s 100(1) (prospectively repealed: see note 1 supra). As to entitlement to discharge see further para 229 ante. As to the Defence Council see para 2 ante.

4 As to call out in these circumstances see para 232 et seq post.

5 Reserve Forces Act 1980 s 13(4) (prospectively repealed: see note 1 supra). The further period of service so ordered (together with the period, or aggregate of the periods, of the man's service in response to call out for warlike operations) must not exceed 12 months: s 13(4) (prospectively repealed: see note 1 supra).

6 As to call out for permanent service see para 232 et seq post.

7 Reserve Forces Act 1980 s 13(2) (prospectively repealed: see note 1 supra). He may not, however, without his consent be called out for warlike operations during the term of his current engagement for a period or periods exceeding in the aggregate 12 months: s 13(3) (prospectively repealed: see note 1 supra).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/A. CALL OUT FOR SERVICE/232. Power to call out reservists.

(iii) Call out for Training and Service

A. CALL OUT FOR SERVICE

232. Power to call out reservists.

All members of the reserve forces¹ are liable to be called out for permanent service² if it appears to Her Majesty that national danger is imminent or a great emergency has arisen³, or in the event of an actual or apprehended attack on the United Kingdom⁴. Members of the reserve forces are also liable to be called out if it appears to the Secretary of State⁵ that warlike operations are in preparation or progress⁶. Certain reservists are also liable to be called out if it appears to the Secretary of State that it is necessary or desirable to use armed forces on operations outside the United Kingdom for the protection of life and property or on operations anywhere in the world for the alleviation of distress or the preservation of life or property in time of disaster or apprehended disaster⁷.

Except where it is initiated by the Secretary of State, call out is effected by order signified under his hand, and when an order has been made, the occasion of its making must forthwith be communicated to Parliament⁸. If a call out order is made by Her Majesty and Parliament is then separated by adjournment or prorogation which will not expire within five days, a proclamation must be issued for the meeting of Parliament within that time, and Parliament must meet and sit upon the day appointed by the proclamation and continue to sit and act as if it had stood adjourned or prorogued to that day⁹. A call out order may be revoked¹⁰.

Persons liable to be called out may be called into service by a written notice known as a call out notice¹¹.

1 As to what constitutes the reserve forces see para 223 ante.

2 'Permanent service' includes actual service: Reserve Forces Act 1996 s 127(1). As to the call out of naval reserve forces see para 173 ante.

3 See the Reserve Forces Act 1980 s 10(1) (ss 10(1)-(3), 11, 18(1), 20(1), 22 substituted, ss 16(1) amended, and ss 11(1A), 16(1A), 18(1A), 20(1A), 22(1A) added, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, regs 2-5, 7, 9; and all repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11 (see para 224 ante)); and the Reserve Forces Act 1996 s 52(1)(a). Further provision is made for the operation and application of call out orders made in these circumstances: see the Reserve Forces Act 1980 s 10(2), (6) (s 10(2) as so substituted and prospectively repealed); and the Reserve Forces Act 1996 s 52(2)-(4). Provision is also made for the calling out for service in Northern Ireland of members of the Royal Irish Regiment who were formerly members of the Ulster Defence Regiment: see the Reserve Forces Act 1980 ss 10(5), 24, 25 (all modified by the Army Act 1992 s 3(2); and repealed, as from a day to be appointed, by the Reserve Forces Act 1996 Sch 11). See also para 227 ante.

4 See the Reserve Forces Act 1980 ss 16(1), 18(1), 20(1), 22(1) (as amended, substituted and prospectively repealed: see note 3 supra); and the Reserve Forces Act 1996 s 52(1)(b). The liability to call out in these circumstances of members of the reserve forces to whom the Reserve Forces Act 1980 continues to apply (see further para 224 ante) is stated to be for permanent service 'on home defence service': see the Reserve Forces Act 1980 ss 16(1), 18(1), 20(1), 22(1) (as amended, substituted and prospectively repealed: see note 3 supra). For these purposes, 'home defence service' means military or air force service in any place in the United Kingdom, the Channel Islands or the Isle of Man in defence of any of those territories against actual or apprehended attack: s 156(1). In relation to this definition, service on any flight of which the points of departure and intended return are within the boundaries of those territories and their territorial waters is deemed to be

service within the United Kingdom, notwithstanding that the flight may in its course extend beyond those boundaries: s 156(4). Further provision is made for the operation and application of call out orders made in these circumstances: see the Reserve Forces Act 1980 ss 16(1A), 18(1A), 20(1A), 22(1A) (as added, substituted and prospectively repealed: see note 3 supra); and the Reserve Forces Act 1996 s 52(2)-(4). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

5 As to the Secretary of State see para 2 ante.

6 See the Reserve Forces Act 1980 s 11(1) (as substituted and prospectively repealed: see note 3 supra); and the Reserve Forces Act 1996 s 54(1). Further provision is made for the operation and application of call out orders made in these circumstances: see the Reserve Forces Act 1980 s 11(1A) (as added and prospectively repealed: see note 3 supra); and the Reserve Forces Act 1996 s 54(2)-(4).

Liability to be called out for warlike operations does not extend to persons whose service in the reserve is in consequence of their having enlisted in the regular army or air force before 1 April 1967: see the Reserve Forces Act 1980 s 11(2)(a) (as substituted and prospectively repealed: see note 3 supra). As to the significance of 1 April 1967 see para 241 note 4 post. As to the liabilities to call out for overseas service of various categories of members of the Army Reserve and the Air Force Reserve to whom the Reserve Forces Act 1980 s 11 (as substituted, amended, and prospectively repealed) does not apply see s 157(2), Sch 8 para 16(2), (3), (5)-(10) (Sch 8 para 16(6) amended by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, reg 28; and the Reserve Forces Act 1980 Sch 8 para 16(2), (3), (5)-(10) repealed, as from a day to be appointed, by the Reserve Forces Act 1996 Sch 11).

7 See the Reserve Forces Act 1996 s 56(1). Further provision is made for the operation and application of call out orders made in these circumstances: see the Reserve Forces Act 1996 s 56(2)-(4). Members of the reserve forces to whom the Reserve Forces Act 1980 applies (as to whom see para 224 ante) may not be called out for these purposes.

8 Reserve Forces Act 1980 s 10(2) (as substituted and prospectively repealed: see note 3 supra), ss 11(1A), 16(1A), 18(1A), 20(1A), 22(1A) (as added and prospectively repealed: see note 3 supra); Reserve Forces Act 1996 ss 52(7), 54(7), 56(7).

9 Reserve Forces Act 1980 s 10(2) (as substituted and prospectively repealed: see note 3 supra), ss 16(1A), 18(1A), 20(1A), 22(1A) (as added and prospectively repealed: see note 3 supra); Reserve Forces Act 1996 ss 52(8).

10 See the Reserve Forces Act 1980 s 10(2) (as substituted and prospectively repealed: see note 3 supra), ss 11(1A), 16(1A), 18(1A), 20(1A), 22(1A) (as added and prospectively repealed: see note 3 supra); and the Reserve Forces Act 1996 ss 52(5), (6), 54(5), (6), 56(5), (6).

11 As to call out notices see para 233 post.

UPDATE

232 Power to call out reservists

NOTE 3--Reserve Forces Act 1980 ss 10(5), 24, 25 repealed: Armed Forces Act 2006 Sch 14 para 1, Sch 17.

NOTE 6--Reserve Forces Act 1980 s 11(2)(a) amended: Armed Forces Act 2006 Sch 14 para 2.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/A. CALL OUT FOR SERVICE/233. Call out notices and acceptance into service.

233. Call out notices and acceptance into service.

Where a call out order authorises the call out of members of a reserve force¹, the Secretary of State² may call out any member who is liable to be called out under that order by serving a notice (a 'call out notice') on him³. Such a notice requires the person on whom it is served to present himself for service at a specified time and place⁴ and to remain at that place until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice⁵. If a person on whom a call out notice is served fails to comply with either of these requirements, the notice may require him to present himself for service to any person specified in the notice or to any other authorised officer⁶ and, having so presented himself, to remain until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice⁷.

A person served with a call out notice who presents himself for service to an authorised officer at the time and place specified in the notice, presents himself for service to an authorised officer at any other time or place, or is brought before an authorised officer after the time so specified, may be accepted into service by that officer⁸. An authorised officer may decide that such a person should not be accepted into service, in which event he must inform that person that he is not to be accepted into service in pursuance of the call out notice concerned⁹. Any liability of such a person arising from a failure to comply with a call out notice is not affected by his acceptance into service or by a decision not to accept him into service¹⁰.

A person who has not been served with a call out notice despite being liable to be called out under or by virtue of a call out order may be accepted into service if he presents himself for service to an authorised officer¹¹.

1 As to what constitutes the reserve forces see para 223 ante. As to the liability of members of reserve forces to be called out see para 232 ante.

2 As to the Secretary of State see para 2 ante. The Secretary of State may delegate his functions with regard to call out notices to the Defence Council, any particular officers, or any officers of a specified description: Reserve Forces Act 1980 s 26(4)(a) (s 26 substituted by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, reg 11; and repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11 (see para 224 ante)); Reserve Forces Act 1996 s 63. As to the Defence Council see para 2 ante.

3 Reserve Forces Act 1980 s 26(1), (2) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(1). The notice must specify the person to whom it applies and the call out order authorising the calling out of that person and the statutory provision under which the order is made or the person is liable to be called out: Reserve Forces Act 1980 s 26(1), (2), (3)(a)(i) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(3)(a), (b).

Further provision as to the service, content, effect, variation and revocation of call out notices is also made: see the Reserve Forces Act 1980 s 26(1), (2), (3)(b) (as substituted and prospectively repealed: see note 2 supra); and the Reserve Forces Act 1996 s 58(4)-(8). Special provision as to the service liabilities of persons who remain subject to the provisions of the Reserve Forces Act 1980 (as to whom see para 224 ante) is also made: see the Reserve Forces Act 1980 s 28 (amended by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, reg 12; and repealed, as from a day to be appointed, by the Reserve Forces Act 1996 Sch 11: see para 224 ante).

4 Reserve Forces Act 1980 s 26(1), (2), (3)(a)(ii) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(1)(a), (3)(c).

5 Reserve Forces Act 1980 s 26(1), (2) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(1)(b).

6 Reserve Forces Act 1980 s 26(1), (2) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(2)(a). 'Authorised officer' means an officer authorised by or in accordance with directions of the Defence Council for the purposes of the Reserve Forces Act 1996 Pt VI (ss 50-64); Reserve Forces Act 1980 s 26(1), (4)(b) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 64. The places and times at which and persons to whom a person may present himself for service if he fails to present himself at the time and place specified in the notice (see the text and note 4 supra) may also be specified in the notice: Reserve Forces Act 1980 s 26(1), (2) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(3).

7 Reserve Forces Act 1980 s 26(1), (2) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 58(2)(b).

8 Reserve Forces Act 1980 s 26(3) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 59(1). Where such a person is accepted into service, he must be informed by the authorised officer that he has been accepted into service by virtue of s 59(1): Reserve Forces Act 1980 s 26(3) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 59(2).

9 Reserve Forces Act 1980 s 26(3) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 59(3).

10 Reserve Forces Act 1980 s 26(3) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 59(4).

11 See the Reserve Forces Act 1980 s 26(3)(c), (d) (as substituted and prospectively repealed: see note 2 supra); Reserve Forces Act 1996 s 59(5), (6).

UPDATE

233 Call out notices and acceptance into service

TEXT AND NOTES 1-7--Reserve Forces Act 1980 s 26(2) amended: Armed Forces Act 2006 Sch 14 para 10.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/A. CALL OUT FOR SERVICE/234. Protection of employment and other civil interests of reservists.

234. Protection of employment and other civil interests of reservists.

Members of the Army or Air Force Reserve called out for permanent service¹ pursuant to a call out notice² are within the scope of the protection afforded by the Reserve Forces (Safeguard of Employment) Act 1985³, and their service pursuant to such a notice is also relevant service for the purposes of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951⁴. Similar provision is made in connection with the service of former members of the Ulster Defence Regiment in service with the Royal Irish Regiment⁵.

1 For the meaning of 'permanent service' see para 232 note 2 ante.

2 As to liability for call out see para 232 ante; and as to call out notices see para 233 ante.

3 See the Reserve Forces (Safeguard of Employment) Act 1985 s 1 (as amended); and para 92 ante.

4 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 64(1), Sch 1 para 1(i); and para 78 et seq ante.

5 See the Reserve Forces Act 1980 ss 145(2), 146(2) (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11: see para 224 ante).

UPDATE

234 Protection of employment and other civil interests of reservists

TEXT AND NOTE 5--Reserve Forces Act 1980 ss 145(2), 146(2) repealed: Armed Forces Act 2006 Sch 14 paras 21, 22.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/A. CALL OUT FOR SERVICE/235. Duration and termination of permanent service under the Reserve Forces Act 1980.

235. Duration and termination of permanent service under the Reserve Forces Act 1980.

The Reserve Forces Act 1980¹ provides that men of the Army Reserve and the Air Force Reserve² who are subject to the provisions of that Act³ and who are called out for permanent service⁴ are liable to serve until Her Majesty no longer requires their services⁵. This liability is, however, subject to exceptions. No man of either of those reserves who is called out for permanent service may normally⁶ be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve to which he belongs⁷. The period, or aggregate of the periods, during which a man is called out for service during the term of his current engagement while warlike operations are in preparation or progress may not, without his consent, exceed 12 months⁸.

Where the services of a person called into service by a call out notice are no longer required, or a person is in service in pursuance of such a notice at the expiration of the period of his liability for service in pursuance of the enactment specified by the notice, he is entitled to be released from permanent service in the prescribed manner⁹ with all convenient speed¹⁰. Nevertheless, if, at the time when a man of the Army Reserve or the Air Force Reserve would normally be entitled to be discharged, he is called out on permanent service, his discharge may in certain circumstances¹¹ be postponed¹².

1 The Reserve Forces Act 1980 ss 13(2)-(4), 19, 21, 29, 69 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the reserve forces who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed. In order to facilitate the simultaneous operation of the two statutory schemes the Reserve Forces Act 1980 s 29(1) is amended, pending the coming into force of its repeal, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, reg 13.

2 As to what constitutes the reserve forces see para 223 ante. As to the liability of members of reserve forces to be called out see para 232 et seq ante.

3 As to such persons see note 1 supra; and para 224 ante.

4 For the meaning of 'permanent service' see para 232 note 2 ante.

5 Reserve Forces Act 1980 ss 19(1), 21(1) (prospectively repealed: see note 1 supra). For the meaning of 'man' see paras 193 note 2, 223 note 4 ante.

6 As to the postponement of discharge in certain circumstances see the text and notes 11-12 infra.

7 Reserve Forces Act 1980 ss 19(2), 21(2) (prospectively repealed: see note 1 supra). In relation to the Air Force Reserve, however, the Secretary of State is empowered to make regulations authorising any special reservist who has the special qualifications prescribed by the regulations to agree in writing that if the time at which he would otherwise be entitled to be discharged from the Air Force Reserve occurs when he is called out for permanent service, he will continue to serve until the expiration of such period (whether definite or indefinite) as may be specified in the agreement: Reserve Forces Act 1980 s 69(1) (prospectively repealed: see note 1 supra). Regulations made in pursuance of this provision are not statutory instruments and are not recorded in this work. As to the Secretary of State see para 2 ante. A man who enters into such an agreement may then be retained on permanent service, for the period for which he has agreed, in all respects as if his term of service were still unexpired: s 69(2) (prospectively repealed: see note 1 supra). This provision would seem to

be superfluous in view of the wider power to retain reservists beyond their normal discharge date conferred by ss 19(3), 21(3) (prospectively repealed): see the text and notes 11-12 *infra*.

It is also provided that an airman of the reserve who is called out for permanent service may be retained for the same period, and subject to the same conditions, as are applicable to the retention in air force service of an airman of the regular air force beyond the normal date for his discharge while men of the reserve are called out for permanent service: see s 21(3) (prospectively repealed: see note 1 *supra*), applying the Air Force Act 1955 ss 9, 13 (s 9 as amended) (see para 213 *ante*).

8 Reserve Forces Act 1980 s 13(3) (prospectively repealed: see note 1 *supra*). Nevertheless, a reservist called out on permanent service because of warlike operations (ie under s 11(1) (as substituted) (see para 232 *ante*)) could after so serving for some period less than 12 months be required, by a direction of the Secretary of State, to be deemed to be serving thereafter pursuant to some other enactment applicable to him, eg s 10(1) or s 18(1) or s 20(1) (all as substituted and prospectively repealed) (see para 232 *ante*), and thus the duration of his service could, without his consent, be extended beyond 12 months: see s 28 (as amended and prospectively repealed); and para 233 note 3 *ante*.

9 Ie prescribed by regulations made by the Secretary of State: see *ibid* s 156(1). Such regulations are not statutory instruments and are not recorded in this work.

10 *Ibid* s 29(1) (amended and prospectively repealed: see note 1 *supra*). In this provision, the reference to a period of liability for service in pursuance of a particular enactment includes a reference to such a period as extended under any other enactment: s 29(2) (prospectively repealed: see note 1 *supra*). For an example of extension see note 7 *supra*.

11 Ie in the circumstances in which the Army Act 1955 ss 9, 13 (s 9 as amended) and the Air Force Act 1955 ss 9, 13 (s 9 as amended) apply: Reserve Forces Act 1980 ss 19(3), 21(3) (prospectively repealed: see note 1 *supra*). As to the Army Act 1955 s 9 (as amended) (discharge postponed when state of war exists), and s 13 (postponement pending proceedings for offences), see para 203 *ante*.

12 Reserve Forces Act 1980 ss 19(3), 21(3) (prospectively repealed: see note 1 *supra*).

UPDATE

235 Duration and termination of permanent service under the Reserve Forces Act 1980

NOTE 1--Reserve Forces Act 1980 ss 19, 21 amended: Armed Forces Act 2006 Sch 14 paras 4, 6.

NOTE 9--Reserve Forces Act 1980 s 156(1) amended: Armed Forces Act 2006 Sch 14 para 23.

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236. Liability for, and duration of, call out for permanent service under the Reserve Forces Act 1996.

Members of a reserve force¹ to whom the Reserve Forces Act 1996 applies² are liable to be called out for permanent service³ when any order authorising their call out is in force⁴. A person who is called out for service under a call out order⁵ is liable to serve anywhere in the world unless the terms of service applicable in his case restrict his liability on being so called out to service within the United Kingdom⁶ or any area of the United Kingdom⁷.

A reservist who is called out may be released from service at any time⁸. Subject to this, he must in general be released on the expiry of his current term as a member of the force⁹, although his entitlement to be released under this provision may be postponed, any number of times¹⁰, by order of the Defence Council¹¹ or any authorised officer¹². He is also entitled to be released when his current service under the call out order, or his current service under the order and any relevant service¹³ in aggregate, exceeds a specified period¹⁴, although he may enter into a written agreement, or a series of written agreements, consenting to the extension of his period of service under the call out order beyond the day on which he is entitled to be released under this provision or any such subsisting agreement¹⁵, in which event he becomes entitled to be released either at the end of the period specified in the most recent agreement as the period for which his permanent service is being extended or on the expiry of his current term as a member of the force¹⁶.

When a person who is subject to the Reserve Forces Act 1996 and who has been accepted into service under a call out order¹⁷ is no longer required by Her Majesty to be in that service, or if such a person becomes entitled to be released from service¹⁸, or if an order revoking the call out order under which he is serving is made, or it is determined that he is exempted from service¹⁹, he must be released²⁰. Subject to this, a person who has been accepted into service under a call out order must remain in the service until he is released²¹.

Provision is also made for persons in service under a call out order to cease serving under that order and to continue in permanent service²².

1 As to what constitutes the reserve forces see para 223 ante.

2 The members of the reserve forces who became members of the regular or reserve forces on or after 1 April 1997 and members whose membership of the regular or reserve forces precedes that date but who have elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante.

3 For the meaning of 'permanent service' see para 232 note 2 ante.

4 Reserve Forces Act 1996 s 50(1). As to the circumstances in which a call out order may be made see ss 52, 54, 56; and para 232 ante. A call out order authorises, subject to s 50(3), the calling out:

20 (1) of any members of a reserve force; or

21 (2) if the order is so limited, of any members of a reserve force of a description specified in the order,

and for the purposes of head (2) supra a group of members of a force may be described by reference to the unit or body of the force to which they belong or any other criterion: s 50(2). A call out order does not authorise the calling out of any person who is not liable to be called out under the order by virtue of regulations under s 62 (see the text and note 22 infra) or an exemption granted on an application under regulations under s 78 (see

para 252 post): s 50(3). A person who is in service under a call out order must serve until released from that service under s 60 (see the text and notes 17-21 *infra*): s 50(4). A person who is released from a period of service under a call out order is, subject to the provisions of the Reserve Forces Act 1996, liable to be called out again on the authority of the same or any other call out order: s 50(5). The number of persons who are in service under a call out order must not be reckoned in any numbers for the time being authorised by Parliament for any of the regular services: s 50(6).

5 'Service under a call out order' and 'service' mean permanent service on being called out on the authority of a call out order: *ibid* s 64.

6 This includes the Channel Islands and the Isle of Man: *ibid* ss 51(4), 52(9). As to the meaning of 'United Kingdom' generally see para 20 note 1 *ante*.

7 *Ibid* s 51(1). A person whose liability for service is restricted as mentioned in s 51(1) may elect irrevocably in such manner as may be prescribed to be liable for worldwide service: (1) whenever he is called out for service; (2) whenever he is called out for service on the authority of a call out order; or (3) during any period of service (including a current period of service) under a call out order specified in the election: s 51(2). The terms of service of a person who makes an election under s 51(2) are modified to the extent required by the election: s 51(3).

8 See *ibid* ss 53(1), 55(1), 57(1).

9 See *ibid* ss 53(2), 55(2), 57(2).

10 A man's entitlement to be released on the expiry of his current term as a member of the force may be postponed more than once, but may not be postponed beyond the end of the period of 12 months (or nine months where he has been called out under *ibid* s 56 (see para 232 *ante*)) beginning with the day on which (disregarding any postponement) that entitlement arises: ss 53(4), 55(4), 57(4).

11 As to the Defence Council see para 2 *ante*.

12 See the Reserve Forces Act 1996 ss 53(3), 55(3), 57(3). For the meaning of 'authorised officer' see para 233 note 6 *ante*. A postponement of a man's entitlement to be released on the expiry of his current term does not prevent him becoming entitled to be released when his current or aggregate service exceeds the appropriate specified period (see the text and note 14 *infra*) or on the expiration of the term for which he has by written agreement extended his service (see the text and notes 15, 16 *infra*): ss 53(5), 55(5), 57(5).

13 'Relevant service' means any permanent service under *ibid* Pt IV (ss 28-37), Pt V (ss 38-49), Pt VI (ss 50-64) or Pt VII (ss 65-77) in the six years immediately preceding the first day of his current service under the order: ss 53(13), 55(13), 57(11), 69(8).

14 *Ibid* ss 53(6), 55(6), 57(6). The specified period is either nine months (where a person has been called out under s 56 (see para 232 *ante*)), 12 months (where he has been called out under s 54 (see para 232 *ante*)) or three years (where he has been called out under s 52 (see para 232 *ante*)) (see ss 53(6), 55(6), 57(6)), although Her Majesty may by order provide for the period relating to call out under s 54 to be two years and for the period relating to call out under s 52 to be five years in the case of specified persons (see ss 53(11), 55(11)). Such orders are not statutory instruments and are not recorded in this work. They must be signified under the hand of the Secretary of State and their making must be reported forthwith to each House of Parliament: ss 53(11), (12), 55(11), (12)).

15 *Ibid* ss 53(7)(a), (b), 55(7)(a), (b), 57(7)(a), (b). Such an agreement may extend a man's service for a maximum of six months (where he has been called out under s 54 or s 56 (see para 232 *ante*)) or 12 months (where he has been called out under s 52 (see para 232 *ante*)): ss 53(7), 55(7), 57(7).

16 *Ibid* ss 53(9), (10), 55(9), (10), 57(9), (10). By agreeing to extend his service under either s 53(7)(a), s 55(7)(a) or s 57(7)(a), a person loses his entitlement to release from service when his current or aggregate service exceeds the appropriate specified period (see the text and note 14 *supra*), and by making a subsequent agreement to extend his service he loses his entitlement to be released at the end of the period specified in any previous agreement: ss 53(9), 55(9), 57(9). No such agreement may be made at any time when the person concerned is not in service under a call out order, when he could not be served with a call out notice on the authority of the order or any other call out order under s 52, s 54 or s 56 (see para 232 *ante*), as the case may be, or more than 12 months before the day on which (disregarding the agreement) he is entitled to be released owing to his service having exceeded the specified period (see the text and note 14 *supra*) or, as the case may be, at the end of the period specified in any agreement or the most recent such agreement as the period for which his permanent service is being extended: ss 53(8), 55(8), 57(8).

17 As to acceptance into service see para 233 *ante*.

18 le by virtue of the Reserve Forces Act 1996 s 53, s 55 or s 57: see the text and notes 8-16 supra.

19 le on an application under ibid s 78: see para 252 post.

20 Ibid s 60(2). Release must be executed with all convenient speed in such manner as may be prescribed: s 60(2). 'Prescribed' means prescribed by orders or regulations under s 4 (see s 127(1)). Such regulations are not statutory instruments and are not recorded in this work. Orders or regulations may also make provision enabling or requiring a person who has been accepted into service under a call out order to be treated, if the circumstances of his call out or acceptance into service are of a prescribed description and for the purpose of calculating when he is entitled to be released by virtue of s 53, s 55 or s 57 (see the text and notes 8-16 supra), as having been accepted into service on an earlier day than that on which he was actually accepted: s 60(3). Provision so made must secure that any earlier day applicable for the purpose of calculating when a person is entitled to be released from service is to be notified to him as soon as is practicable after the day on which he was actually accepted into service, and that the period beginning with the earlier day is reckoned as part of his relevant service for the purposes of s 53(13), s 55(13), s 57(11) and s 69(8) (see note 13 supra): s 60(4).

21 Ibid s 60(1).

22 See ibid ss 61-64.

UPDATE

236 Liability for, and duration of, call out for permanent service under the Reserve Forces Act 1996

TEXT AND NOTES--The following provisions apply to a person if he is not in service under a call-out order under the Reserve Forces Act 1996 s 52, 54 or 56 and, if accepted into service under such a call-out order, he would be immediately entitled to release under s 53(6) or (10), 55(6) or (10), or 57(6) or (10): ss 53A(1), 55A(1), 57A(1) (ss 53A, 55A and 57A added by the Armed Forces Act 2006 Sch 14 paras 34, 35, 36). The person may agree in writing that, if he is accepted into service under a call-out order, in calculating when he is entitled to be released by virtue of s 53(6) or (10), 55(6) or (10), or 57(6) or (10), any service of his under the 1996 Act Pts 4-7 (ss 28-77) that occurred before he entered into the agreement is to be treated as not having occurred: ss 53A(2), 55A(2), 57A(2) (ss 53A, 55A, 57A as added). Such an agreement may also provide that, if the person is accepted into service under a call-out order under (1) the 1996 Act s 52, s 53 applies in his case as if for the specified period of 3 years there were substituted a shorter period specified in the agreement (s 53A(3) (s 53A as added)); (2) the 1996 Act s 54, s 55 applies in his case as if for the specified period of 12 months there were substituted a shorter period specified in the agreement (s 55A(3) (s 55A as added)); (3) the 1996 Act s 56, s 57 applies in his case as if for the specified period of 9 months there were substituted a shorter period specified in the agreement (s 57A(3) (s 57A as added)). If an order under s 53(11) applies in relation to the person, s 53A(3) above has effect as if the reference to the period of 3 years were to the period of 5 years: s 53A(4) (s 53A as added). If an order under s 55(11) applies in relation to the person, s 55A(3) above has effect as if the reference to the period of 12 months were to the period of 2 years: s 55A(4) (s 55A as added).

NOTE 16--Reserve Forces Act 1996 ss 53(8), 55(8), 57(8) amended: Armed Forces Act 2006 Sch 14 para 33.

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237. Calling out of pensioners under the Reserve Forces Act 1980.

Under the Reserve Forces Act 1980¹, certain categories of army and air force pensioners² are liable to be recalled for service at any time when men of the Army or Air Force Reserve, as the case may be, are called out on permanent service³. When recalled for service the pensioner is deemed to be enlisted in the regular forces or the regular air force, as appropriate⁴, for the period beginning with the date of his recall and ending with the date on which there is no longer an applicable call out order⁵. However, if on his recall he requires to be enlisted for that period in accordance with the normal enlistment procedure⁶, and this enlistment is carried out, he is not then deemed to have been enlisted as previously mentioned⁷. While so recalled, he suffers no reduction in pay or other emoluments by reason of being in receipt of a service pension, nor is his service pension reduced or withheld⁸.

Whole-time service rendered in pursuance of any notice or direction given under these provisions is within the scope of the protection afforded by the Reserve Forces (Safeguard of Employment) Act 1985⁹, and is also relevant service for the purposes of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951¹⁰.

1 The Reserve Forces Act 1980 ss 31, 32, 36, Sch 2 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the reserve forces who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed. In order to facilitate the simultaneous operation of the two statutory schemes the Reserve Forces Act 1980 s 32 is amended, and s 36 is substituted, pending the coming into force of their repeal, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, regs 16, 19.

2 The following persons are exempt: a man in holy orders or a regular minister of any religious denomination; a certified blind person; and a person receiving treatment for mental disorder in a hospital within the meaning of the Mental Health Act 1983 (see s 145(1); and MENTAL HEALTH vol 30(2) (Reissue) para 417) or otherwise receiving such treatment as an in-patient at the expense of a health authority: Reserve Forces Act 1980 s 31(2)(b), Sch 2 (Sch 2 amended by the Mental Health Act 1983 s 148(1), Sch 4 para 53; and the Reserve Forces Act 1980 s 31, Sch 2 prospectively repealed (see note 1 supra)). Liability otherwise extends to every person under the age of 60 who has been discharged from service as a soldier or airman and is in receipt of a service pension which was originally granted on or after 3 September 1939 and has been assessed or reassessed by royal warrant (in the case of army pensions) or by order of Her Majesty (in the case of air force pensions) issued after 16 December 1948: Reserve Forces Act 1980 s 31(2)(a), (3), (4), (6) (prospectively repealed: see note 1 supra). A royal warrant or order by Her Majesty may state that it is to be disregarded for the purpose of s 31 (prospectively repealed): see s 31(3) (prospectively repealed: see note 1 supra). A service pension does not include a disability pension: s 31(6) (prospectively repealed: see note 1 supra). A person is deemed to be in receipt of a pension even though it has been commuted for a sum of money, or has not been paid for any period, or is being applied for any purpose or paid to some other person, but not if it has been wholly forfeited and not restored in whole or in part: s 31(7) (prospectively repealed: see note 1 supra). As to pensions generally and the distinction between service and disability pensions see para 263 et seq post.

3 Ibid ss 31(1), 32(1), (2) (amended and prospectively repealed: see note 1 supra). In this context, 'called out for permanent service' means called out for such service under the Reserve Forces Act 1996 s 52 (see para 232 ante): Reserve Forces Act 1980 s 32(1), (2) (amended and prospectively repealed: see note 1 supra). As to the procedure for calling out pensioners under the Reserve Forces Act 1980 see para 239 post; and as to the acceptance of such persons into service see para 240 post. Persons liable to be recalled in pursuance of these provisions may be exempted from recall or their liability relaxed (see s 36(2) (substituted and prospectively repealed: see note 1 supra); and the Reserve Forces Act 1996 s 73), and may be required to provide certain information to the Secretary of State (see the Reserve Forces Act 1980 s 36(3) (substituted and prospectively repealed: see note 1 supra); the Reserve Forces Act 1996 s 75; and the Reserve Forces Act 1996 (Provision of

Information by Persons Liable to be Recalled) Regulations 1997, SI 1997/308). As to the Secretary of State see para 2 ante.

4 Reserve Forces Act 1980 s 32(3)(a) (prospectively repealed: see note 1 supra). For the meaning of 'regular forces' see para 191 ante. For the meaning of 'regular air force' see para 206 ante.

5 Ibid s 32(4) (as amended and prospectively repealed: see note 1 supra). The reference in the text to an applicable call out order is to an order under the Reserve Forces Act 1996 s 52 (see note 2 supra; and para 232 ante). Nothing in the Army Act 1955 or the Air Force Act 1955 as to the term for which a person may be enlisted, or in subsequent corresponding provisions, prejudices the operation of the Reserve Forces Act 1980 s 32 (as amended and prospectively repealed): s 32(5) (prospectively repealed: see note 1 supra).

6 Ie pursuant to the Army Act 1955 s 2, Sch 1 or the Air Force Act 1955 s 2, Sch 1, as appropriate: see para 197 ante.

7 Reserve Forces Act 1980 s 32(3)(b) (prospectively repealed: see note 1 supra). Because he is deemed to be enlisted, or is actually enlisted, in the regular forces or the regular air force, the pensioner is subject to the Army Act 1955 or the Air Force Act 1955, as the case may be. Hence, if (when the emergency which occasioned his being recalled is declared to be at an end) disciplinary proceedings are pending against such a pensioner, or he is serving (outside the United Kingdom) a custodial sentence awarded by a court-martial, he can be retained in service: Army Act 1955 s 13; Air Force Act 1955 s 13. So, also, if at the declared end of the emergency which occasioned his recall (whereupon the term of his enlistment comes to an end) a state of war exists between Her Majesty and any foreign power, or such a pensioner is serving outside the United Kingdom, it is submitted that he could be retained in service, even if the Army Reserve, or the Air Force Reserve, as the case may be, were no longer called out: see the Army Act 1955 s 9 (as amended); the Air Force Act 1955 s 9 (as amended); and para 203 ante.

8 Reserve Forces Act 1980 s 31(5) (prospectively repealed: see note 1 supra).

9 See the Reserve Forces (Safeguard of Employment) Act 1985 s 1(1); and para 92 ante.

10 See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 64(1), Sch 1 para 1(i); and para 78 et seq ante.

UPDATE

237 Calling out of pensioners under the Reserve Forces Act 1980

NOTE 2--Reserve Forces Act 1980 s 31(6), (7) amended: Armed Forces Act 2006 Sch 14 para 12.

NOTE 3--SI 1997/308 amended: SI 2005/3118.

TEXT AND NOTES 4-7--Reserve Forces Act 1980 s 32(3), (4) further amended, s 32(5) substituted: Armed Forces Act 2006 Sch 14 para 13.

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238. Calling out of long term reservists under the Reserve Forces Act 1980.

Under the Reserve Forces Act 1980¹, there is a liability to be recalled for service which is applicable to persons known as long term reservists, who comprise two categories, namely those whose liability to recall is compulsory and those who have voluntarily consented to be subject to that liability². Those to whom the liability is compulsorily applicable are former male soldiers, under the age of 45 years, who are neither members of the armed forces apart from these provisions, nor liable to be recalled to service as an army pensioner³, nor persons excluded from liability to recall⁴. To be within the scope of this liability to recall, such persons must also have enlisted in the regular forces in pursuance of regulations and neither have purchased their discharge nor been granted a commission⁵.

Any former soldier who is either compulsorily or voluntarily a long term reservist may be recalled for service by the Secretary of State at any time when men of the Army Reserve are called out for permanent service⁶. Recall is effected by notice specifying the time and place at which the person to whom the notice is addressed is to present himself for service⁷. Where thus recalled, a long term reservist is deemed to be enlisted in the regular forces for the period beginning with the time specified in the notice and ending (unless he is previously discharged) with the date on which there is no longer an applicable call out order in force⁸.

Any person who is, or is liable to be, recalled under these provisions is within the scope of the protection afforded by the Reserve Forces (Safeguard of Employment) Act 1985, and service rendered by virtue of these provisions is relevant service within the meaning of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951⁹.

1 The Reserve Forces Act 1980 ss 34(1)-(3), 36, 145(1)(b), 146(1)(b) have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the reserve forces who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed. In order to facilitate the simultaneous operation of the two statutory schemes the Reserve Forces Act 1980 s 34(1), (3) are amended, and s 36 is substituted, pending the coming into force of their repeal, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, regs 17, 19.

2 See the Reserve Forces Act 1980 s 34(2) (prospectively repealed: see note 1 supra). As to the procedure for calling out long term reservists see para 239 post; as to acceptance into service see para 240 post. Persons liable to be recalled in pursuance of these provisions may be exempted from recall or their liability relaxed (see the Reserve Forces Act 1980 s 36(2) (substituted and prospectively repealed: see note 1 supra); and the Reserve Forces Act 1996 s 73), and may be required to provide certain information to the Secretary of State (see the Reserve Forces Act 1980 s 36(3) (substituted and prospectively repealed: see note 1 supra); the Reserve Forces Act 1996 s 75; and the Reserve Forces Act 1996 (Provision of Information by Persons Liable to be Recalled) Regulations 1997, SI 1997/308). As to the Secretary of State see para 2 ante.

3 Ie under the Reserve Forces Act 1980 s 31 (prospectively repealed): see para 237 ante.

4 Ibid s 34(2)(a) (prospectively repealed: see note 1 supra). For those excluded from recall see Sch 2 (as amended and prospectively repealed); and para 237 note 2 ante.

5 Ibid s 34(2)(b)-(d) (prospectively repealed: see note 1 supra).

6 Ibid s 34(1) (amended and prospectively repealed: see note 1 supra). The reference in the text to call out for permanent service is a reference to call out in pursuance of an order made under the Reserve Forces Act 1996 s 52 (see para 232 ante): Reserve Forces Act 1980 s 34(1) (as amended and prospectively repealed: see note 1 supra).

7 Ibid s 34(1) (amended and prospectively repealed: see note 1 supra). As to the notice procedure see para 239 post.

8 Ibid s 34(3) (amended and prospectively repealed: see note 1 supra). The reference in the text to an applicable call out order is to an order under the Reserve Forces Act 1996 s 52 (see para 232 ante). As to the effect of being deemed to be enlisted in the regular forces see para 237 note 7 ante.

9 Reserve Forces Act 1980 ss 145(1)(b), 146(1)(b) (prospectively repealed: see note 1 supra). As to the Reserve Forces (Safeguard of Employment) Act 1985 see para 92 ante; and as to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 see para 78 et seq ante.

UPDATE

238 Calling out of long term reservists under the Reserve Forces Act 1980

NOTE 2--SI 1997/308 amended: SI 2005/3118.

TEXT AND NOTE 8--Reserve Forces Act 1980 s 34(3) further amended: Armed Forces Act 2006 Sch 14 para 14.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/A. CALL OUT FOR SERVICE/239. Procedure for calling out of pensioners and long term reservists under the Reserve Forces Act 1980.

239. Procedure for calling out of pensioners and long term reservists under the Reserve Forces Act 1980.

Under the Reserve Forces Act 1980¹, the specified army and air force pensioners and long term reservists who are liable to recall² are recalled by means of a notice being served on them by the Secretary of State³. Such a notice requires the pensioner or reservist in question to present himself for service at a specified time and place⁴ and to remain at that place until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice⁵. If a person on whom a recall notice is served fails to comply with either of these requirements, the notice may require him to present himself for service to any person specified in the notice or to any other authorised officer⁶ and, having so presented himself, to remain until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice⁷.

The numbers of persons who are recalled for service under a recall order may not be reckoned in any numbers for the time being authorised by Parliament for any of the regular services⁸.

1 The Reserve Forces Act 1980 ss 35, 36 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the reserve forces who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed. In order to facilitate the simultaneous operation of the two statutory schemes the Reserve Forces Act 1980 ss 35, 36 are substituted, pending the coming into force of their repeal, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, regs 18, 19.

2 As to the army and air force pensioners who are liable to recall and the circumstances in which they may be recalled see para 237 ante. As to the long term reservists who are liable to recall and the circumstances in which they may be recalled see para 238 ante. As to the acceptance into service of persons so recalled see para 240 post.

3 Reserve Forces Act 1980 s 35(1) (substituted and prospectively repealed: see note 1 supra). As to the Secretary of State see para 2 ante. The notice must specify the person to whom it applies and the recall order which authorises his recall: Reserve Forces Act 1980 s 35(4) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 70(3)(a), (b). The Secretary of State may delegate his functions under these provisions: see the Reserve Forces Act 1980 s 36(2) (as substituted and amended: see note 1 supra); and the Reserve Forces Act 1996 s 74. Further provision as to the service, content, effect, variation and revocation of call out notices is made by the Reserve Forces Act 1980 s 35(4) (as substituted and prospectively repealed: see note 1 supra); and the Reserve Forces Act 1996 s 70(4), (5), (7), (8).

4 Reserve Forces Act 1980 s 35(1)(a), (4) (substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 70(3)(c). For these purposes, 'service' means permanent service: Reserve Forces Act 1980 s 36(4) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 77(1). In the case of pensioners who are liable to recall in pursuance of the Reserve Forces Act 1980 s 31 (prospectively repealed) (see para 237 ante), the time so specified must be not earlier than the third day after the service of the notice: s 35(2) (as substituted and prospectively repealed: see note 1 supra).

5 Ibid s 35(1)(b) (substituted and prospectively repealed: see note 1 supra).

6 Ibid s 35(4) (substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 70(2) (a). 'Authorised officer' means an officer authorised by or in accordance with directions of the Defence Council for these purposes: Reserve Forces Act 1980 s 36(4) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 77(1). The places and times at which and persons to whom a person may present himself for service if he fails to present himself at the time and place specified in the notice may also be

specified in the notice: Reserve Forces Act 1980 s 35(4) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 70(3). As to the Defence Council see para 2 ante.

7 Reserve Forces Act 1980 s 35(4) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 70(2)(b).

8 Reserve Forces Act 1980 s 35(3) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 65(5).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/A. CALL OUT FOR SERVICE/240. Acceptance into service of pensioners and long term reservists called out under the Reserve Forces Act 1980.

240. Acceptance into service of pensioners and long term reservists called out under the Reserve Forces Act 1980.

Under the Reserve Forces Act 1980¹, where a specified army or air force pensioner or long term reservist who is liable to recall² and has been served with a recall notice³ presents himself for service⁴ to an authorised officer⁵ at the specified time and place⁶ or any other time or place or is brought before an authorised officer after the time so specified, he may be accepted into service by that officer⁷. Such a person may also be accepted into service if a call out order⁸ is in force notwithstanding that he has not been served with a recall notice, provided that men of the army or air force reserve are in permanent service under the order and the person in question presents himself for service to an authorised officer⁹.

1 The Reserve Forces Act 1980 s 36 has been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continues to have effect, until a day to be appointed, in relation to members of the reserve forces who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed. In order to facilitate the simultaneous operation of the two statutory schemes the Reserve Forces Act 1980 s 36 is substituted, pending the coming into force of its repeal, by the Reserve Forces Act 1996 (Transitional, Consequential and Saving Provisions) Regulations 1997, SI 1997/306, reg 18.

2 As to the army and air force pensioners who are liable to recall and the circumstances in which they may be recalled see para 237 ante. As to the long term reservists who are liable to recall and the circumstances in which they may be recalled see para 238 ante.

3 As to the service of recall notices see para 239 ante.

4 For the meaning of 'service' see para 239 note 4 ante.

5 For the meaning of 'authorised officer' see para 239 note 6 ante.

6 I.e. the time and place specified in the notice under the Reserve Forces Act 1996 s 70(3)(c): see para 239 ante.

7 Reserve Forces Act 1980 s 36(1) (substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 71(1). Where such a person is accepted into service, he must be informed by the authorised officer that he has been accepted into service by virtue of these provisions: Reserve Forces Act 1980 s 36(1) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 71(2). An authorised officer may decide that such a person should not be accepted into service, in which event he must inform that person that he is not to be accepted into service in pursuance of the recall notice concerned: Reserve Forces Act 1980 s 36(1) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 71(3). Any liability of such a person arising from a failure to comply with a call out notice is not affected by his acceptance into service or by a decision not to accept him into service: Reserve Forces Act 1980 s 36(1) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 71(4).

8 I.e. an order under *ibid* s 52: see further paras 237-238 ante.

9 Reserve Forces Act 1980 s 36(1)(a) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 71(5). Where a person is accepted into service in these circumstances, the authorised officer must inform him that he has been accepted into service under that order by virtue of these provisions and he is deemed to have been recalled into service by virtue of the Reserve Forces Act 1980 s 31 or s 34 (s 34 as amended; both prospectively repealed) (see paras 237-238 ante), as the case may be: Reserve Forces Act 1980 s 36(1)(b) (as substituted and prospectively repealed: see note 1 supra); Reserve Forces Act 1996 s 71(6).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/B. CALL OUT FOR TRAINING/241. Liability to training period under the Reserve Forces Act 1980.

B. CALL OUT FOR TRAINING

241. Liability to training period under the Reserve Forces Act 1980.

Under the Reserve Forces Act 1980¹, a member of the Army and Air Force Reserve² who is subject to the provisions of that Act³ may be called out in any year for training in the United Kingdom or elsewhere for one period not exceeding 15 days, and for such other periods as may be prescribed none of which may exceed 36 hours without his consent⁴. Such a member may for these purposes be attached to and trained with any body of Her Majesty's forces⁵. A special reservist of the Air Force Reserve may additionally be called out for one or more special courses of training in the United Kingdom or the Isle of Man, at such places and times, and for such periods, as may be prescribed⁶, subject to his right, on enlistment or re-engagement, to have inserted in his attestation paper a condition that he is not to be called out for training, whether annual or special, for a longer period than that which is specified in it⁷.

Provision is also made for the calling out for training of members of the Royal Irish Regiment who were formerly members of the Ulster Defence Regiment⁸.

1 The Reserve Forces Act 1980 ss 38, 39(1)(a), 70, Sch 8 para 17 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the reserve forces who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed.

2 As to what constitutes the reserve forces see para 223 ante.

3 As to such persons see note 1 supra and para 224 ante.

4 Reserve Forces Act 1980 s 38 (prospectively repealed: see note 1 supra). The power to prescribe training periods is by way of regulations which, not being statutory instruments, are not recorded in this work. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

These provisions do not apply to a person who became a member of the reserve in consequence of having enlisted in the regular army or the regular air force before 1 April 1967 (ie the date on which the provisions of the Reserve Forces Act 1966 (repealed) imposing additional liabilities to call out for service and training on members of the Army Reserve or the Air Force Reserve were brought into operation): Reserve Forces Act 1980 s 39(1)(a) (prospectively repealed: see note 1 supra). Any such person may be called out for annual training within the United Kingdom at such time or times, at such place or places, and for such period or periods, as may be prescribed: Sch 8 para 17(1), (3) (prospectively repealed: see note 1 supra). A member of the Army Reserve, however, is not liable to be called out in any one year for more than 12 days or 20 drills (Sch 8 para 17(1) (prospectively repealed; see note 1 supra)), and a man of the Air Force Reserve is not liable to be called out in any one year for more than 24 days if he is serving as a qualified pilot or navigator, or for more than six months if he is undergoing instruction to qualify for service as a pilot or navigator, or for more than 12 days or 20 drills or instructional parades in the case of any other man (Sch 8 para 17(4) (prospectively repealed: see note 1 supra)). During any period of training for which any such man of either of those reserves is called out, he may be attached to and trained with any body of the regular or auxiliary forces, or of the regular or auxiliary air force, as the case may be: Sch 8 para 17(2), (5) (prospectively repealed: see note 1 supra).

5 Ibid s 38 (prospectively repealed: see note 1 supra).

6 Ibid s 70(1) (prospectively repealed: see note 1 supra). The total period must not exceed six months: s 70(1) (prospectively repealed: see note 1 supra).

7 Ibid s 70(2) (prospectively repealed: see note 1 supra). These provisions are applicable to all special reservists, whether subject to s 38 (prospectively repealed) (see the text and notes 1-2 supra), or to Sch 8 para

17(3)-(5) (prospectively repealed) (see the text and note 1 supra): Sch 8 para 17(6) (prospectively repealed: see note 1 supra).

8 See *ibid* ss 44, 143 (both as modified and prospectively repealed); and para 227 ante.

UPDATE

241 Liability to training period under the Reserve Forces Act 1980

NOTE 4--Reserve Forces Act 1980 s 39(1)(a) amended: Armed Forces Act 2006 Sch 14 para 15.

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242. Training and other duties under the Reserve Forces Act 1996.

Members of the reserve forces¹ to whom the Reserve Forces Act 1996 applies² may, in accordance with orders or regulations³, be required, in any year, to train in the United Kingdom or elsewhere for:

- 49 (1) one or more periods not exceeding 16 days in aggregate; and
- 50 (2) such other periods as may be prescribed, none of which may exceed 36 hours without the consent of the person concerned,

and such persons may, while undergoing such a period of training, be attached to and trained with any body of Her Majesty's forces⁴. Orders or regulations may provide for securing that persons of such descriptions as may be prescribed will be exempted from liability to be required to undergo such training⁵.

A member of a reserve force may enter into a commitment in writing (a 'full-time service commitment') to undertake a period of full-time service of such duration as may be specified in the commitment⁶. A member of a reserve force may enter into a commitment in writing (an 'additional duties commitment') to perform such duties, for such period or periods, as may be specified in the commitment⁷. Parliament may authorise for each of the reserve forces a maximum number of officers and a maximum number of men who may at any time be: (a) in full-time service under full-time service commitments; or (b) subject to additional duties commitments which are in force⁸.

None of the provisions described above⁹ prevents a member of a reserve force: (i) undertaking any voluntary training in the United Kingdom or elsewhere that is made available to him as a member of that force; (ii) undertaking any voluntary training or performing other voluntary duties in the United Kingdom or elsewhere, being training or duties undertaken or performed at his own request or following a request made to him by or on behalf of his commanding officer¹⁰.

1 As to what constitutes the reserve forces see para 223 ante.

2 I.e. members of the reserve forces who became members of the regular or reserve forces on or after 1 April 1997 and members whose membership of the regular or reserve forces precedes that date but who have elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante.

3 I.e. under *ibid* s 4 (see para 223 ante).

4 *Ibid* s 22(1). Such orders or regulations may, in particular, prescribe different periods under head (2) in the text for different forces or parts of a force: s 22(2). This provision has effect subject to s 23: s 22(3).

5 *Ibid* s 23(1). Such orders or regulations may also provide for relaxing, in such cases as may be prescribed, the liability to be required to undergo training under s 22: s 23(2). Officers authorised for these purposes by or in accordance with directions of the Defence Council may, in accordance with such orders or regulations: (1) exempt any unit or other group of members of a reserve force from liability to be required to undergo training under s 22; or (2) relax that liability in the case of the unit or group: s 23(3). As to the Defence Council see para 2 ante. A commanding officer may, in accordance with orders or regulations: (a) exempt any member of a reserve force who is under his command from liability to be required to undergo training under s 22; or (b) relax that liability in the case of such a person: s 23(4).

6 *Ibid* ss 24(1), 127(1). For further provision as to commitments to a period of full-time service see s 24(2)-(10).

7 Ibid s 25(1). For further provision as to additional duties commitments see s 25(2)-(7).

8 Ibid s 26(1). Accordingly, the numbers of officers and men of a reserve force who are in full-time service, or subject to additional duties commitments which are in force, must not exceed any numbers for the time being authorised by Parliament for that force: s 26(2). Any members of a reserve force who are in full-time service or who are subject to additional duties commitments must not be reckoned in any numbers for the time being authorised by Parliament for any of the regular services: s 26(3).

9 le ibid Pt III (ss 22-27).

10 Ibid s 27(1). Orders or regulations may make provision as to the provision and use of training facilities for members of reserve forces and otherwise in connection with the undertaking of training or other duties as mentioned in s 27(1): s 27(2). A member of a reserve force is subject to service law while performing voluntary duties or training as mentioned in s 27(1): s 27(3). 'Service law' means military law, air force law or the Naval Discipline Act 1957 (as the case may require): Reserve Forces Act 1996 s 127(1).

UPDATE

242 Training and other duties under the Reserve Forces Act 1996

NOTES 6, 7--Reserve Forces Act 1996 ss 24(2), 25(2) amended: Armed Forces Act 2006 Sch 14 paras 30, 31.

NOTE 10--Reserve Forces Act 1996 s 27(3) repealed: Armed Forces Act 2006 Sch 14 para 32. Definition of 'service law' substituted: Armed Forces Act 2006 Sch 14 para 53. The officer who is the 'commanding officer' of a person for the purposes of any provision of the Reserve Forces Act 1996 is to be determined by or under regulations made by the defence council under this provision: s 127(3) (added by the Armed Forces Act 2006 Sch 14 para 53).

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243. Preliminary training of members of the Territorial Army and the Royal Auxiliary Air Force.

Under the Reserve Forces Act 1980¹, every man of the Royal Auxiliary Air Force is required, during the first year of his enlistment, to attend the number of drills and instructional parades, and fulfil the other conditions, prescribed for a recruit in that force², for the purposes of preliminary training³. In addition, if so provided by Order in Council, he must attend to be trained at such places within the United Kingdom, at such times and for such periods not exceeding in the whole the number of days specified in the Order in Council, as may be prescribed, and for that purpose he may be called out once or more often⁴.

The same obligations as to preliminary training apply to any man of the Territorial Army to whom the general training requirements⁵ do not apply⁶.

1 The Reserve Forces Act 1980 s 40 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the Royal Auxiliary Air Force and, where applicable, the Territorial Army, who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed.

2 Reserve Forces Act 1980 s 40(1), (2) (prospectively repealed: see note 1 supra).

3 The statutory requirements as to preliminary training described in this paragraph are additional to those relating to the annual training of the Royal Auxiliary Air Force (as to which see para 244 post): *ibid* s 40(3) (prospectively repealed: see note 1 supra).

4 *Ibid* s 40(1) (prospectively repealed: see note 1 supra). Orders in Council under this provision are not statutory instruments and are not recorded in this work. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

5 *Ie* the requirements of *ibid* s 38 (prospectively repealed): see para 244 post. As to those to whom those requirements apply (who are therefore outside the scope of this provision) see para 244 post.

6 See *ibid* s 157(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/B. CALL OUT FOR TRAINING/244. Annual training of members of the Territorial Army and the Royal Auxiliary Air Force.

244. Annual training of members of the Territorial Army and the Royal Auxiliary Air Force.

Under the Reserve Forces Act 1980¹, any member of the Territorial Army who became a member on or after 1 April 1967 by enlistment or re-engagement or becoming an officer² may³ be called out in any year for training in the United Kingdom or elsewhere for one period not exceeding 15 days and for such other periods as may be prescribed⁴, none of which may exceed 36 hours without the consent of the person in question⁵. These members may be attached to and trained with any body of Her Majesty's forces⁶.

Unless exempted in whole or in part⁷, every man of the Royal Auxiliary Air Force is required, by way of annual training, to be trained for not less than eight or more than 15 days every year, at such times and at such places within the United Kingdom, as may be prescribed⁸, and for that purpose he may be called out once or more often in every year⁹. Every such man must attend also the number of drills and instructional parades, and fulfil the other conditions as to training, prescribed for the Royal Auxiliary Air Force¹⁰. These obligations may, however, be dispensed with in whole or in part, either as respects a unit or an individual man of the force¹¹.

Annual training obligations equivalent to those described above in relation to men of the Royal Auxiliary Air Force apply to any man of the Territorial Army to whom the general training requirements¹² do not apply¹³.

1 The Reserve Forces Act 1980 ss 38, 39(1)(b), 41, 42 have been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continue to have effect, until a day to be appointed, in relation to members of the Territorial Army or, as the case may be, the Royal Auxiliary Air Force who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed.

2 Reserve Forces Act 1980 s 39(1)(b) (prospectively repealed: see note 1 supra).

3 Such call out must be in accordance with regulations made by the Secretary of State: *ibid* s 38 (prospectively repealed: see note 1 supra). As to the Secretary of State see para 2 ante.

4 The Secretary of State may make regulations prescribing these periods: *ibid* s 38 (prospectively repealed: see note 1 supra). Such regulations are not statutory instruments and are not recorded in this work. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

5 *Ibid* s 38 (prospectively repealed: see note 1 supra).

6 *Ibid* s 38 (prospectively repealed: see note 1 supra).

7 See the text and note 11 *infra*.

8 *Ibid* by regulations made under the Reserve Forces Act 1980: ss 41, 156(1) (s 41 prospectively repealed: see note 1 supra). Such regulations are not statutory instruments and are not recorded in this work.

9 *Ibid* s 41(1) (prospectively repealed: see note 1 supra).

10 *Ibid* s 41(2) (prospectively repealed: see note 1 supra).

11 *Ibid* s 41(3) (prospectively repealed: see note 1 supra). Further, Her Majesty may by Order in Council extend the annual training of all or any part of the Royal Auxiliary Air Force in any year to a specified period not exceeding 30 days, or may reduce it or dispense with it in any year: s 42 (prospectively repealed: see note 1 supra).

12 le the requirements of *ibid* s 38 (prospectively repealed).

13 *Ibid* s 157(2). As to the categories of members of the Territorial Army to whom s 38 applies see the text and note 1 *supra*.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iii) Call out for Training and Service/C. SPECIAL AGREEMENTS FOR CALL OUT/245. Special agreements.

C. SPECIAL AGREEMENTS FOR CALL OUT

245. Special agreements.

Members of the reserve forces¹ who have entered into a special agreement² take on an increased liability for call out, and are liable, while the agreement is in force, to be called out for permanent service anywhere in the world and to fulfil any training obligations specified in the agreement³. Before entering into a special agreement, a person must: (1) submit a declaration to an authorised person in the prescribed form stating whether he is in employment and, if so, giving the name of his employer and such other particulars as may be prescribed; (2) where the person concerned is in employment with an employer which is qualifying employment⁴, produce to an authorised person a document recording the consent of that employer to his entering into the agreement⁵. Where a person who has entered into a special agreement begins a new qualifying employment he must, within seven days of beginning that employment, submit a declaration to an authorised person in the prescribed form stating that he has begun a new qualifying employment and giving the name of his employer and such other particulars as may be prescribed⁶. A special agreement terminates when, before the person concerned has been accepted into service, any of the following events occurs: (a) the expiry of the period of 12 months beginning with the day on which the agreement was entered into; (b) the expiry of such period as may be prescribed after the giving in the prescribed manner of notice to terminate the agreement by the person concerned; (c) the giving by the Secretary of State of a direction that the agreement be terminated; (d) the acceptance of the person into permanent service under Part VI of the Reserve Forces Act 1996⁷; (e) the coming into force of another special agreement; and (f) any other event specified in the agreement as an event which terminates the agreement⁸. A special agreement will terminate on the release of the person concerned from a period of service⁹. On the termination of a special agreement the obligations undertaken by the person concerned by entering the agreement cease and, accordingly, he may not be accepted into service¹⁰.

The Secretary of State may, if he considers it appropriate to do so, call out for service any person who has entered into a special agreement by serving a notice on him requiring him to present himself for service at a specified time and place; and to remain at that place until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice¹¹. A person served with a call out notice who: (i) presents himself for service to an authorised officer at the time and place specified in the notice; (ii) presents himself for service to an authorised officer at any other time or place; or (iii) is brought before an authorised officer after the time so specified, may be accepted into service by that officer¹². Provision is also made with respect to the release of individuals from service¹³.

Persons in service under a call out order may cease serving under that order and continue in permanent service¹⁴.

Provision is made for the delegation of certain functions¹⁵ and for Parliamentary control of numbers and reports¹⁶.

1 As to what constitutes the reserve forces see para 223 ante.

2 le a written agreement by which a person accepts the obligations mentioned in the Reserve Forces Act 1996 s 28(1): s 37(1). All members of the reserve forces are eligible to enter into special agreements: s 129, Sch 9 para 12.

3 Ibid s 28(1). A person in qualifying employment must, before entering into a special agreement, obtain the consent of his employer in such form as may be prescribed: s 28(2). 'Qualifying employment' means employment under a contract of service which normally involves employment for 14 hours or more weekly (and 'new qualifying employment' must be construed in accordance with s 30(7) (see note 6 infra)): s 37(1). For further provision as to qualifying employment see s 37(2)-(6). A special agreement: (1) must specify a period not exceeding nine months as the maximum period for which the person concerned may be required to serve on being accepted into service under the Reserve Forces Act 1996 Pt IV (ss 28-37); and (2) may specify other terms relating to the obligations undertaken by the person entering into it: s 28(3). A person who has entered into a special agreement: (a) must fulfil any training obligations specified in the agreement; (b) if accepted into service under Pt IV, must serve, in accordance with the terms of the agreement and (subject to those terms), on such other terms and conditions as may be prescribed and are applicable in his case: s 28(4). The obligations undertaken by a person who has entered into a special agreement are in addition to any other obligations he may have as a member of a reserve force: s 28(5).

4 As to 'qualifying employment' see note 2 supra.

5 Reserve Forces Act 1996 s 29(1). Where an authorised person is satisfied at the time a person enters into a special agreement that: (1) he is not in qualifying employment; or (2) he is in qualifying employment and the employer has consented to his entering into the agreement, the validity of the agreement will not be affected by any failure to comply with s 28(2) (see note 3 supra) and a document purporting to be a certificate signed by the authorised person stating that he is satisfied of those matters is evidence of that fact: s 29(2). 'Authorised person' means a person authorised by or in accordance with directions of the Defence Council for the purpose of exercising the functions concerned: s 29(4). As to the Defence Council see para 2 ante.

Where a person has more than one qualifying employment s 29(1), (2) apply separately in relation to each employer of his: s 29(3).

6 Ibid s 30(1). Subject to s 30(3), (4), where a person has begun a new qualifying employment with an employer and submitted the declaration required by s 30(1), he is not liable to be called out or required to fulfil any training obligations specified in his special agreement unless and until: (1) the employer gives his written consent in the prescribed form to the continuation in force of the agreement; and (2) an authorised person certifies under s 30(5) that the employer has given that consent: s 30(2). Section 30(2) does not apply if the declaration is submitted by a person who is in service under Pt IV: s 30(3). If the declaration is submitted after the person concerned has been served with a call out notice under s 32 (see the text and note 11 infra) but before the notice has ceased to have effect, the person concerned remains liable to be accepted into service until the notice ceases to have effect: s 30(4). Where, after a declaration under s 30(1) has been submitted, an authorised person is satisfied that the person concerned has begun a new qualifying employment and that his employer has given the requisite consent, he must certify that fact in the prescribed form: s 30(5). For the purposes of head (1) supra, such a certificate is conclusive evidence that the employer has consented to the continuation in force of the special agreement in question: s 30(6). For the purposes of s 30, a person begins a new qualifying employment when, at any time after entering into a special agreement he begins a qualifying employment with a person who was not already his employer or where the hours for which he is employed, by a person who has not previously been required to give consent under s 30 or s 29 (see the text and note 5 supra), change so as to cause his employment by that person to become qualifying employment: s 30(7).

7 le ibid ss 50-64: see para 236 ante.

8 Ibid s 31(1). A direction under head (c) in the text may be given on the application of the person concerned or any employer of his or without any such application: s 31(2). As to the Secretary of State see para 2 ante.

9 Ibid s 31(3).

10 Ibid s 31(4). Any reference in Pt IV to a person who has entered into a special agreement does not include a reference to any person whose agreement has terminated: s 31(5).

11 Ibid s 32(1). For further provision as to call out notices see s 32(2)-(7).

12 Ibid s 33(1). For further provision as to acceptance into service under Pt IV see s 33(2)-(6).

13 Ibid s 34.

14 See ibid ss 61-64

15 le under ibid s 31 (see the text and notes 8-10 supra), s 32 (see the text and note 11 supra) or s 33 (see the text and note 12 supra): see s 35 (amended by the Armed Forces Act 2001 s 34, Sch 6 para 11).

16 Reserve Forces Act 1996 s 36.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(iv) Recall for Service of Officers and Former Servicemen/246. Recall for service of officers and former servicemen.

(iv) Recall for Service of Officers and Former Servicemen

246. Recall for service of officers and former servicemen.

Certain officers and former servicemen¹ are liable to be recalled for service² when any recall order which authorises their recall is in force³. A person who is recalled for service as a man⁴ of any of the regular services will, while in service under the recall order concerned, be deemed to be enlisted in the regular service concerned⁵. A person who has been released or discharged from a period of service under a recall order may, subject to the provisions of the Reserve Forces Act 1996, be recalled again on the authority of the same or any other recall order⁶. Any question whether a person may be recalled on the authority of a recall order must be determined by reference to the circumstances at the time he is served with a recall notice or, if he is accepted into service under a recall order⁷, when he is accepted into service⁸. The numbers of persons who are recalled for service under a recall order must not be reckoned in any numbers for the time being authorised by Parliament for any of the regular services⁹. A person who is recalled is liable to serve anywhere in the world¹⁰.

Her Majesty may make an order authorising the recall of specified officers and former servicemen¹¹ if it appears to Her that national danger is imminent or that a great emergency has arisen, or in the event of an actual or apprehended attack on the United Kingdom¹².

Provision is made for the determination of the time when those in service under a recall order are entitled to be released from service (in the case of officers) or discharged (in the case of men)¹³.

Where a recall order is in force, the Secretary of State may recall any person who is liable to be recalled on the authority of that order by serving a notice on him requiring him: (1) to present himself for service at a specified time and place; and (2) to remain at that place until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice¹⁴. Provision is made with respect to acceptance into permanent service of persons served with a recall notice¹⁵ and the release and discharge from service of individuals who have been accepted into service¹⁶.

Supplementary provision has been made in relation to the recall for service of officers and former servicemen¹⁷.

1 In general, these provisions apply to any person not serving in the regular services or the reserve forces who holds a commission as an officer or who has served as a man in the regular services and has not become an officer since being discharged or transferred to the reserve from the regular services (Reserve Forces Act 1996 s 66(1)), although there are a number of temporary and permanent exclusions (see s 66(2)-(8)).

2 'Service', in relation to service under a recall order, means permanent service: *ibid* s 77(1).

3 *Ibid* s 65(1).

4 *Ie* a person of either sex who is of or below the rank or rate of warrant officer: *ibid* s 77(1).

5 *Ibid* s 65(2).

6 *Ibid* s 65(3).

7 *Ie* under *ibid* s 71: see the text and note 15 *infra*.

8 Ibid s 65(4).

9 Ibid s 65(5).

10 Ibid s 67(1). However, a person who, when he was last discharged or transferred to the reserve from the regular services, was liable only for service within the United Kingdom or any area of the United Kingdom, is not liable to serve outside the United Kingdom or, as the case may be, that area on being recalled: s 67(2). A person whose liability for service on recall is restricted as mentioned in s 67(2) may elect irrevocably in such manner as may be prescribed to be liable for worldwide service: (1) whenever he is recalled for service; (2) during any period of service (including a current period service) under a recall order specified in the election: s 67(3). Section 67(2) does not apply: (a) to any person who makes an election under head (1) supra; or (b) in relation to a period of service covered by the election, to a person who makes an election under head (2) supra: s 67(4). A person who is serving in the regular services or the reserve force may make an election under s 67(3) before that service ceases: s 67(5). The United Kingdom includes the Channel Islands and the Isle of Man: s 77(1). As to the meaning of 'United Kingdom' generally see para 20 note 1 ante.

11 le persons to whom ibid s 66 applies: see note 1 supra.

12 Ibid s 68(1). For further provision as to the recall for national danger, great emergency or attack on the United Kingdom see s 68(2)-(10).

13 Ibid s 69.

14 Ibid s 70(1). For further provision as to recall notices see s 70(2)-(8). As to the delegation of certain functions under s 70 see s 74. As to the Secretary of State see para 2 ante.

15 Ibid s 71.

16 Ibid s 72.

17 As to the power to exempt persons from or to relax recall liability see ibid s 73. As to the power to require information see s 75; and the Reserve Forces (Provision of Information by Persons Liable to be Recalled) Regulations 1997, SI 1997/308. Provision is made so that recall does not affect service pensions: see the Reserve Forces Act 1996 s 76.

UPDATE

246 Recall for service of officers and former servicemen

NOTE 1--Reserve Forces Act 1996 s 66(2) amended: Armed Forces Act 2006 Sch 14 para 37.

TEXT AND NOTE 16--Reserve Forces Act 1996 s 72 amended: Armed Forces Act 2006 Sch 14 para 38.

NOTE 17--SI 1997/308 amended: SI 2005/3118.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(v) Discipline/247. Application of legislation.

(v) Discipline

247. Application of legislation.

The provisions of the Army Act 1955 relating to discipline¹ apply to officers of the army reserve while subject to military law, and to officers who have retired but are for the time being subject to military law². They also apply to warrant officers, non-commissioned officers and men of the Army Reserve while subject to military law³. The provisions of the Air Force Act 1955 relating to discipline⁴ apply to officers of any reserve of officers when undergoing training or when serving with a body of the regular air force or a body of the Air Force Reserve called out for permanent service⁵. They also apply to officers who have retired but are for the time being subject to air force law, and to warrant officers, non-commissioned officers and men of the Air Force Reserve while subject to air force law⁶.

Further, while subject to military or air force law, those categories of persons are also subject to the provisions of one or the other of those Acts relating to billeting and the requisitioning of vehicles⁷, powers of command, attachment to other forces of the Crown, redress of complaints and a number of other matters⁸. The provisions of those Acts relating to stoppages of pay as a punishment⁹, forfeiture of and deductions from pay¹⁰, and the enforcement by deductions from pay of maintenance liabilities and judgment debts¹¹, apply to officers of any reserve of officers, but only when in actual service¹², and to warrant officers, non-commissioned officers and men of the Army Reserve or the Air Force Reserve, but only when called out on permanent service¹³. All those provisions except the ones relating to the enforcement of liabilities and debts by deductions from pay may, however, be applied to officers of the reserves not in actual service, and to warrant officers, non-commissioned officers and men of the reserves when they are not called out on permanent service, by regulations made under the Reserve Forces Act 1980¹⁴.

1 Ie the Army Act 1955 Pt II (ss 24-143): see para 302 et seq post.

2 Ibid s 211(1)(a) (amended by the Reserve Forces Act 1996 s 131(1), Sch 10 para 7). As to when such officers are subject to military law see para 310 post.

3 Army Act 1955 s 211(1)(c). If an army reservist is convicted by court-martial of desertion, he forfeits the period of service as respects which he is convicted, but such service may be restored in whole or in part and credited to him: s 17(1), (5), (6); applied to reservists by s 211(2) (substituted by the Reserve Forces Act 1996 Sch 10 para 7). As to such forfeiture see para 199 ante. As to when such soldiers are subject to military law see para 310 post.

4 Ie the Air Force Act 1955 Pt II (ss 24-143): see para 302 et seq post.

5 Ibid s 210(1)(a) (substituted by the Reserve Forces Act 1996 Sch 10 para 11). For the meaning of 'regular air force' see para 206 ante.

6 Air Force Act 1955 s 210(1)(b), (d). As to the liability of such an airman to forfeiture of service see s 17(1), (4); applied by s 210(2). As to when such officers and airmen are subject to air force law see para 310 post.

7 Ie the Army Act 1955 Pt IV (ss 154-176) and the Air Force Act 1955 Pt IV (ss 154-176); applied by the Army Act 1955 s 211(1)(a), (c) and the Air Force Act 1955 s 210(1)(a), (b), (d). As to the provisions so applied see para 126 et seq ante. Provisions relating to billeting and requisitioning are also applicable to men of the Territorial Army and the Royal Auxiliary Air Force: see the Army Act 1955 s 211(1)(b), (c) (s 211(1)(b) substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 7); and the Air Force Act 1955 s 210(1)(b), (c), (d) (s 210(1)(c) substituted by the Reserve Forces Act 1996 Sch 10 para 11). The powers conferred by these provisions are operative only when brought into operation by an order made by the Secretary of State: see the Army Act 1955

s 174; and the Air Force Act 1955 s 174. See further para 126 et seq ante. As to the Secretary of State see para 2 ante.

8 le the provisions of the Army Act 1955 Pt V (ss 177-204A) (as amended) and the Air Force Act 1955 Pt V (ss 177-204A) (as amended); applied by the Army Act 1955 s 211(1)(a), (c) and the Air Force Act 1955 s 210(1)(a), (b), (d). Members of the Royal Irish Regiment are subject to military law in similar circumstances and the provisions of the Army Act 1955 mentioned supra then apply to them: see para 227 ante.

9 le the Army Act 1955 s 71(1)(k) and the Air Force Act 1955 s 71(1)(k) (both as substituted and amended): see para 424 post.

10 le the Army Act 1955 ss 144-149 and the Air Force Act 1955 ss 144-149: see para 218 ante.

11 le the Army Act 1955 ss 150-153 and the Air Force Act 1955 ss 150-153: see para 74 et seq ante.

12 Army Act 1955 s 211(4)(a) (substituted by the Reserve Forces Act 1996 Sch 10 para 7); Air Force Act 1955 s 210(4)(a) (substituted by the Reserve Forces Act 1996 Sch 10 para 11). 'Actual service' means service by an officer (otherwise than when undergoing training) with a body of the regular forces or the regular air force, as the case may be, or with the Army Reserve or the Air Force Reserve when called out on permanent service, or with members of the Territorial Army serving in pursuance of the Reserve Forces Act 1980 s 10(1) or s 11(1) (both as amended and prospectively repealed) (see para 232 ante) or members of the Royal Auxiliary Air Force serving in pursuance of the Reserve Forces Act 1980 s 10(1)) (as amended and prospectively repealed) (see para 232 ante), as the case may be, or for home defence service: Army Act 1955 s 211(5); Air Force Act 1955 s 210(5); Reserve Forces Act 1980 s 157(1)(a). For the meaning of 'regular forces' see para 191 ante.

13 Army Act 1955 s 211(4)(b); Air Force Act 1955 s 210(4)(b). As to call out for permanent service see para 232 et seq ante.

14 Army Act 1955 s 211(4)(a), (b); Air Force Act 1955 s 210(4)(a), (b); Reserve Forces Act 1980 s 157(1)(a). At the date at which this volume states the law no such regulations had been made.

UPDATE

247 Application of legislation

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(v) Discipline/248. General offences.

248. General offences.

A member of a reserve force who: (1) when required by or in pursuance of orders or regulations¹ to attend at any place, fails without reasonable excuse to attend in accordance with the requirement; (2) uses threatening or insulting language or behaves in an insubordinate manner to any officer, warrant officer, non-commissioned officer or petty officer who in pursuance of orders or regulations is acting in the execution of his office, and who would be the superior officer of the offender if he were subject to service law; (3) by any fraudulent means obtains or is an accessory to the obtaining of any pay or other sum contrary to orders or regulations; (4) knowingly or recklessly makes a statement false in any material particular in giving any information required by orders or regulations; or (5) fails without reasonable excuse to comply with orders or regulations, is guilty of an offence triable by court-martial or summarily by a civil court². A member of a reserve force served with a call out notice who, without leave lawfully granted or reasonable excuse: (a) fails to present himself for service at the time and place specified in the call out notice³; (b) having so presented himself, fails to remain there until accepted into service or informed that he is not to be accepted into service in pursuance of that notice; or (c) where he has for any reason failed to present himself at the time and place so specified or to remain there, fails to present himself to a person specified in the call out notice or to any other authorised officer, or, having so presented himself, fails to remain until accepted into service or informed that he is not to be accepted in service in pursuance of that notice, is guilty, according to the circumstances, of desertion or absence without leave⁴. A member of a reserve force who has entered into a full-time service commitment or an additional duties commitment and, without leave lawfully granted or reasonable excuse, fails to appear at the time and place at which he is required to attend: (i) in the case of a full-time service commitment, to begin the period of full-time service contemplated by the commitment; (ii) in the case of an additional duties commitment, to begin a period of service under the commitment, is guilty, according to the circumstances, of desertion or absence without leave⁵. A member of a reserve force who is required to undergo a period of training⁶ and who fails, without leave lawfully granted or reasonable excuse, to appear at any time and place at which he is required to attend, is guilty of absence without leave⁷. Any person who falsely represents himself to be a deserter or absentee without leave from any reserve force is guilty of an offence⁸. Provision is made with respect to the arrest and subsequent treatment of suspected deserters or absentees without leave from the reserve forces⁹. A person who, in the United Kingdom or elsewhere, by any means: (A) procures or persuades, or attempts to procure or persuade, a member of a reserve force to commit an offence of desertion or absence without leave; (B) knowing that a member of a reserve force is about to commit such an offence, aids or assists him in so doing; or (C) knowing a member of a reserve force to be a deserter or an absentee without leave, procures or persuades or assists him to remain a deserter or absentee, or assists in his rescue from custody, is guilty of an offence¹⁰. A person who: (aa) procures or persuades, or attempts to procure or persuade, a person liable to recall to commit an offence of desertion or absence without leave; (bb) knowing that such a person is about to commit such an offence, aids or assists him in so doing; or (cc) knowing a person liable to recall to be a deserter or absentee without leave, procures or persuades or assists him to remain a deserter or absentee, or assists in his rescue from custody, is guilty of an offence¹¹.

Provision is made for records to be kept in a prescribed manner, and for the convening of boards of inquiry, when a member of a reserve land, air or marine force is illegally absent¹².

Further general provision has been made with respect to offences¹³.

- 1 The orders or regulations under the Reserve Forces Act 1996 s 4: see para 223 ante.
- 2 Ibid s 95(1). A person guilty of an offence under s 95 is liable: (1) on conviction by court-martial to suffer imprisonment, or such less punishment provided for by service law; (2) on summary conviction by a civil court: (a) in the case of an offence under s 95(1)(a), (b), or (e), to a fine not exceeding level 3 on the standard scale; and (b) in the case of an offence under s 95(1)(c) or (d) to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 95(2). As to the standard scale see para 40 note 4 ante. A person convicted of an offence under s 95 is liable, if sentenced to a term of imprisonment or if such a term is imposed in default of payment of any fine, to be taken into military custody, air force custody or naval custody (as the case may be): s 95(3). For the meaning of 'civil court' see s 109. For the meaning of 'service law' see s 127(1); and para 242 note 10 ante.
- 3 The under ibid s 32(3)(b), s 43(4)(b) or s 58(3)(c), as the case may be.
- 4 Ibid s 96(1). This provision also applies to a person liable to recall: s 96(2). An offence under s 96 is triable by court-martial or summarily by a civil court: s 96(3). As to the punishment of an offence under s 96 see s 98.
- 5 Ibid s 97(1). As to full-time service commitments and additional duties commitments see para 242 ante.
- 6 The in accordance with ibid s 22 (see para 242 ante), a special agreement (see para 245 ante) or an employee agreement (see para 251 post), or any other requirement applicable to special members.
- 7 Ibid s 97(2). An offence under s 97 is triable by court-martial or summarily by a civil court: s 97(3). As to the punishment of an offence under s 97 see s 98. An offence under the Army Act 1955 s 37 or s 38 or the Air Force Act 1955 s 37 or s 38 committed by a member of a reserve force is triable summarily by a civil court as well as by court-martial: Reserve Forces Act 1996 s 98(1).
- 8 Ibid s 99. Such a person is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both: see s 99.
- 9 Ibid s 100, Sch 2 (amended by the Armed Forces Discipline Act 2000 s 9(4)).
- 10 Reserve Forces Act 1996 s 101(1). As to the meaning of 'United Kingdom' see para 20 note 1 ante.
- 11 Ibid s 101(2). A person guilty of an offence under s 101(1) or (2) is liable on summary conviction: (1) in the case of an offence involving an offence of desertion or a deserter, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both; and (2) in the case of an offence of absence without leave or an absentee without leave, to a fine not exceeding level 5 on the standard scale: s 101(3).
- 12 Ibid s 102.
- 13 This includes the trial of offences as offences under service law (s 103), the jurisdiction of civil courts (s 104), the trial of offences by a civil court (s 105), offences triable by court-martial or civil court (s 106), the time for the institution of proceedings (s 107) and provision as to evidence (s 108, Sch 3).

UPDATE

248 General offences

TEXT AND NOTES 1, 2--Reserve Forces Act 1996 s 95(1), (2) amended, s 95(1A)-(1C) added, s 95(2A) substituted for s 95(3): Armed Forces Act 2006 Sch 14 para 39. Section 164(2), (3) (see PARA 424) applies in relation to the Reserve Forces Act 1996 s 95(2)(a): s 127(4) (added by the Armed Forces Act 2006 Sch 14 para 53).

TEXT AND NOTES 3, 4--Reserve Forces Act 1996 s 96(1), (3) amended: Armed Forces Act 2006 Sch 14 para 40.

TEXT AND NOTES 5-7--Reserve Forces Act 1996 s 97(1), (3) amended: Armed Forces Act 2006 Sch 14 para 41.

NOTE 7--Reserve Forces Act 1996 s 98 amended: Armed Forces Act 2006 Sch 14 para 42.

TEXT AND NOTE 8--Reserve Forces Act 1996 s 99 repealed: Armed Forces Act 2006 Sch 14 para 43.

TEXT AND NOTE 9--Reserve Forces Act 1996 s 100A substituted for s 100, Sch 2 repealed: Armed Forces Act 2006 Sch 14 paras 44, 55.

TEXT AND NOTE 12--Reserve Forces Act 1996 s 102 repealed: Armed Forces Act 2006 Sch 14 para 45.

NOTE 13--Reserve Forces Act 1996 ss 104, 105, 107, 108 amended, s 106, Sch 3 repealed: Armed Forces Act 2006 Sch 14 paras 46-50, 56. See also the Reserve Forces (Evidence in Proceedings before Civil Courts) Regulations 2009, SI 2009/1111.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(v) Discipline/249. Orders and regulations in relation to the Territorial Army and the Royal Auxiliary Air Force.

249. Orders and regulations in relation to the Territorial Army and the Royal Auxiliary Air Force.

Under the Reserve Forces Act 1980¹, orders authorised to be made by a military or air force authority may be signified by an order, instruction or letter under the hand of any officer authorised in that behalf; and any order, instruction or letter purporting to be signed by any officer who appears from it to be so authorised is evidence of his being so authorised².

1 The Reserve Forces Act 1980 s 93 has been repealed by the Reserve Forces Act 1996 s 131(2), Sch 11, but continues to have effect, until a day to be appointed, in relation to members of the Royal Auxiliary Air Force and the Territorial Army who became members of the regular or reserve forces before 1 April 1997 and who have not elected to be governed by the provisions of the Reserve Forces Act 1996: see para 224 ante. At the date at which this volume states the law no such day had been appointed.

2 Reserve Forces Act 1980 s 93(2) (prospectively repealed: see note 1 supra).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(v) Discipline/250. Territorial Army and Royal Auxiliary Air Force.

250. Territorial Army and Royal Auxiliary Air Force.

Officers on the active list or permanent staff of the Territorial Army or the Royal Auxiliary Air Force are at all times subject to military or air force law¹, and while so subject are liable to trial by court-martial for any offences they commit which are contrary to these codes². Similarly, men³ of the Territorial Army or the Royal Auxiliary Air Force may, while subject to military or air force law⁴, be tried by court-martial for any offences committed by them contrary to these codes⁵, and they may be so tried for any offences under the Reserve Forces Act 1980 which are cognisable by court-martial⁶.

1 See the Army Act 1955 s 205(1)(e) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 1); and the Air Force Act 1955 s 205(1)(f). Territorial Army officers not on the active list are subject to military law only when called out on permanent service (see para 232 et seq ante) or otherwise serving, whether compulsorily or not, with a body of troops for the time being subject to military law (eg when called out for home defence service or under a special agreement (see para 245 ante)): Army Act 1955 s 205(1)(e) (as so substituted). Officers of the Royal Auxiliary Air Force in the General List are subject to air force law only when doing duty with any body of the regular air force or when ordered on any duty or service for which as such officers they are liable: Air Force Act 1955 s 205(1)(f). For the meaning of 'regular air force' see para 206 ante.

2 For limitations on the application of military or air force law see the Army Act 1955 s 211(4)(c), (5), (6), (8) (s 211(4)(c), (5)-(8) substituted by the Reserve Forces Act 1996 Sch 10 para 7); and the Air Force Act 1955 s 210(4)(c), (5), (6), (8) (s 210(4)(c), (5)-(8) substituted by the Reserve Forces Act 1996 Sch 10 para 11).

3 For the meaning of 'men' see para 223 note 4 ante.

4 As to when they are so subject see the Army Act 1955 s 205(1)(h) (amended by the Reserve Forces Act 1996 Sch 10 para 1); the Air Force Act 1955 s 205(1)(i); and paras 307-308 post. As to the trial of offenders who have ceased to be subject to military or air force law, and the limitation of time for the trial of offences, see para 304 post.

5 For limitations on this liability see the Army Act 1955 s 211(4)(c), (6), (7), (8); and the Air Force Act 1955 s 210(4)(c), (6), (7), (8) (all as substituted: see note 2 supra).

6 The offences relate to failure to appear in response to a call out notice served in pursuance of the Reserve Forces Act 1980 ss 10(1), 11(1) (except in relation to a man of the Royal Auxiliary Air Force) or s 22: see para 232 ante.

UPDATE

250 Territorial Army and Royal Auxiliary Air Force

TEXT AND NOTES--Army Act 1955 and Air Forces Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/ (vi) Employee Agreements/251. Employee agreements.

(vi) Employee Agreements

251. Employee agreements.

Provision is made to enable certain employees, in pursuance of arrangements between their employers and the Secretary of State, to enter into employee agreements and become special members of a reserve force¹.

An employee agreement² may be entered into by any employee in pursuance of arrangements made between his employer and the Secretary of State³. An employee of an employer who has made any such arrangements must, before entering into an employee agreement, obtain the written consent of that employer in such form as may be prescribed⁴. An employee agreement must, if the person concerned is not a member of the force when he enters into the agreement, specify the date by which he must enlist in, or become an officer of, the reserve force specified in the agreement⁵. An employee agreement may specify: (1) a maximum period for which the liability of the special member⁶ is to subsist; (2) events which will terminate his liability to be called out, and to fulfil training obligations, under the agreement; and (3) other terms relating to the obligations undertaken by the person concerned or his service as a special member⁷. On entering into an employee agreement a person who is already a member of the reserve force concerned will become a special member of that force⁸. Where a person entering into an employee agreement is not already a member of the reserve force concerned he will become a special member of the force concerned on enlisting in or becoming an officer of that force; but the agreement will lapse if he has not enlisted in or become an officer of that force on or before the date specified in the agreement⁹. An employee agreement entered into by any person will terminate: (a) on his entering into another employee agreement; (b) on his ceasing to be a member of the reserve force concerned; or (c) on his resuming service as, or becoming, an ordinary member¹⁰ of that force¹¹.

Provision is made as to the liabilities of special members to be called out or to train¹², the cessation of liabilities¹³ and the discharge of special members when their liabilities for call out or training cease¹⁴.

The Secretary of State may call out for service any special member of a reserve force if he considers that it is appropriate, in the light of operational requirements and the arrangements he has made with the employer of that person, for that person to continue to undertake work of direct or indirect benefit to the armed forces¹⁵. The Secretary of State may call out a special member by serving a notice on that person requiring him to present himself for service¹⁶ at a specified time and place; and to remain at that place until he is either accepted into service or informed that he is not to be accepted into service in pursuance of the notice¹⁷. A special member served with a call out notice who: (i) presents himself for service¹⁸ to an authorised officer¹⁹ at the time and place specified in the notice; (ii) presents himself for service to an authorised officer at any other time or place; or (iii) is brought before an authorised officer after the time so specified, may be accepted into service by that officer²⁰. Provision is also made with respect to the release from service of special members²¹.

Supplementary provision has been made with regard to employee agreements²².

¹ Reserve Forces Act 1996 s 38(1). As to what constitutes the reserve forces see para 223 ante. As to the Secretary of State see para 2 ante.

2 In *ibid* Pt V (ss 38-49), references to an employee agreement are references to a written agreement by which a person agrees to accept the liability mentioned in s 40(1) (see the text and note 12 *infra*) by becoming a special member of a reserve force specified in the agreement: s 38(2).

3 *Ibid* s 39(1).

4 *Ibid* s 39(2). Where an authorised person is satisfied at the time a person enters into an employee agreement that his employer has consented to his entering into the agreement, the validity of the agreement is not affected by any failure to comply with s 39(2); and a document purporting to be a certificate signed by the authorised person stating that he is so satisfied is evidence of that fact: s 39(3). For these purposes, 'authorised person' means a person authorised by or in accordance with directions of the Defence Council for the purpose of exercising the functions mentioned in s 39(3): s 39(4). As to the Defence Council see para 2 *ante*.

5 *Ibid* s 39(5).

6 *Ie* under *ibid* s 40 (see the text and note 12 *infra*).

7 *Ibid* s 39(6).

8 *Ibid* s 39(7).

9 *Ibid* s 39(8).

10 *Ie* a member of a reserve force who: (1) is not a special member of that force; and (2) is not a member of that force for the purpose only of becoming a special member: *ibid* s 49.

11 *Ie* in accordance with *ibid* s 42 (see the text and note 14 *infra*): s 39(9).

12 *Ibid* s 40.

13 *Ibid* s 41.

14 *Ibid* s 42.

15 *Ibid* s 43(1).

16 *Ie* permanent service: *ibid* s 43(9).

17 *Ibid* s 43(2). For further provision as to call out notices see *ibid* s 43(3)-(8).

18 *Ie* permanent service: *ibid* s 43(9).

19 *Ie* an officer authorised by or in accordance with directions of the Defence Council for the purposes of *ibid* Pt V: s 49.

20 *Ibid* s 44(1). For further provision as to acceptance into service of special members see s 44(2)-(6).

21 *Ibid* s 45.

22 As to the power to make orders and regulations see *ibid* s 38(3), (4). As to the delegation of certain functions under s 43 (see the text and notes 15-17) or s 44 (see the text and note 20 *supra*) see s 46. As to Parliamentary control of numbers and reports see s 47. As to the application of these provisions to Crown servants, employees of sub-contractors and self-employed persons see s 48.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(vii) Exemption and Financial Assistance/252. Schemes for exemption and financial assistance.

(vii) Exemption and Financial Assistance

252. Schemes for exemption and financial assistance.

The Secretary of State may by regulations make provision enabling a person liable to be called out, or any employer of such a person, to apply for any deferral, revocation, entitlement to release or exemption which, under the regulations, may be granted to the person by or in respect of whom such an application is made¹. The Secretary of State may by regulations make provision enabling any person liable to be recalled, or any employer of such a person, to apply for any deferral, revocation, entitlement to release or discharge or exemption which, under the regulations, may be granted to the person by or in respect of whom such an application is made². Any person who fails without reasonable excuse to provide information, in connection with the lapse of a deferral, entitlement to be released or discharged or an exemption, which he is required to provide under regulations under the provisions described above is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both³. Any person who: (1) in connection with an application under regulations under the provisions described above; or (2) in connection with the lapse of a deferral, determination of entitlement to release or discharge or an exemption granted under those regulations, knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both⁴.

The Secretary of State may by regulations provide for the making of payments by him to any persons in respect of any financial loss of a description prescribed by the regulations which is suffered by them and attributable to their being in permanent service under Part IV⁵ or Part V⁶ of the Reserve Forces Act 1996 or under a call out or recall order⁷. The Secretary of State may by regulations provide for the making of payments by him to employers (including employers who are self-employed) in respect of any financial loss of a description prescribed by the regulations which is suffered by them and attributable to any of their employees being in permanent service under Part IV or Part V of the Reserve Forces Act 1996 or under a call out or recall order⁸. Power is conferred on the Secretary of State to suspend payments in the case of national danger or great emergency⁹. Any person who, in connection with a claim by another person under regulations under the provisions described above, fails without reasonable excuse to provide information which he is required to provide by the regulations is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both¹⁰. Any person who, in connection with a claim under regulations under the provisions described above, knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both¹¹.

1 Reserve Forces Act 1996 s 78(1). As to the Secretary of State see para 2 ante. As to the regulations see ss 78(2)-(4), 81; and the Reserve Forces (Call-out and Recall) (Exemptions Etc) Regulations 1997, SI 1997/307. As to the effect of the exemptions see the Reserve Forces Act 1996 s 80.

2 Ibid s 79(1). As to the regulations see ss 79(2)-(5), 81; and the Reserve Forces (Call-out and Recall) (Exemptions Etc) Regulations 1997, SI 1997/307. As to the effect of the exemptions see the Reserve Forces Act 1996 s 80.

3 Ibid s 82(1). As to the standard scale see para 40 note 4 ante.

4 Ibid s 82(2).

5 Ie ibid Pt IV (ss 28-37): see para 245 ante.

6 Ie ibid Pt V (ss 38-49): see para 251 ante.

7 Ibid s 83(1). The regulations may provide for payments to be made, in relation to any description of financial loss, towards the provision of pensions, allowances or gratuities to or in respect of a person making a claim: s 83(2). The regulations may, in relation to any such payments: (1) provide for any such payments to be made to any person of a prescribed description; (2) require such a person to accept such payments (notwithstanding anything which would otherwise prevent him from doing so) on such terms as may be determined by or under the regulations; and (3) require persons of any such description to provide information in connection with claims for such payments or, where payments have been made to them, in connection with the use made of the money: s 83(3). A person making a claim under the regulations who is dissatisfied with the determination of his claim may appeal against the determination to a reserve forces appeal tribunal (see para 253 post): s 83(4). For supplementary provision as to regulations made under s 83 see s 85. See further the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 1997, SI 1997/309.

8 Reserve Forces Act 1996 s 84(1). Regulations under s 84 may also provide for the making of payments by the Secretary of State to the partners of a person carrying on business in partnership in respect of any financial loss of a description prescribed by the regulations which is suffered by them and attributable to that person being in permanent service under Pt IV or Pt V or under a call out or recall order: s 84(2). A person making a claim under regulations under s 84 who is dissatisfied with the determination of his claim may appeal against the determination to a reserve forces appeal tribunal (see para 253 post): s 84(3). For supplementary provision as to regulations made under s 84 see s 85. See further the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 1997, SI 1997/307.

9 Reserve Forces Act 1996 s 86.

10 Ibid s 87(1).

11 Ibid s 87(2).

UPDATE

252 Schemes for exemption and financial assistance

NOTES 1, 2--See *Khan v Royal Air Force Summary Appeal Court* [2004] EWHC 2230 (Admin), [2004] All ER (D) 81 (Oct).

NOTE 7--SI 1997/309 replaced: Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005, SI 2005/859.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(vii) Exemption and Financial Assistance/253. Reserve forces appeal tribunals.

253. Reserve forces appeal tribunals.

Reserve forces appeal tribunals may be constituted for the purpose of exercising the jurisdiction mentioned below¹. There is a panel of chairmen², and a panel of ordinary members³. An appeal tribunal is to consist of a chairman and two other members selected from the appropriate panel⁴. The Secretary of State may make rules with respect to the practice and procedure to be followed on appeals to appeal tribunals⁵. Any person who, in connection with an appeal to an appeal tribunal, knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence⁶. Any person who without reasonable excuse: (1) fails to provide information in connection with an appeal to an appeal tribunal which he is required to provide; or (2) fails to attend an appeal tribunal when required to do so, is guilty of an offence⁷.

1 Reserve Forces Act 1996 s 88(1). Such number of appeal tribunals will be constituted, sitting at such times and such places, as the Secretary of State may from time to time determine: s 88(2). The Secretary of State may make available such officers and staff as he may consider necessary for carrying out the administrative work of appeal tribunals: s 88(3). As to the Secretary of State see para 2 ante.

An appeal lies to an appeal tribunal by virtue of s 81(4) in respect of a determination of an application under regulations under s 78 or s 79 (see para 252 ante): s 89(1). An appeal lies to an appeal tribunal by virtue of ss 83(4), 84(3) in respect of a determination of a claim under regulations under ss 83, 84 (see para 252 ante): s 89(2).

An appeal to an appeal tribunal will be by way of a rehearing of the application or claim: s 89(3). An appeal tribunal hearing an appeal may dismiss the appeal or may make any determination which the person or body hearing the original application or claim had the power to make: s 89(4). The person or body responsible for making determinations under the regulations under which the application or claim was made must (so far as may be necessary) give effect under those regulations to the determination of the appeal tribunal: s 89(5).

2 Ibid s 90(1). No person may be appointed to the panel unless: (1) he has a ten-year general qualification (within the meaning of the Courts and Legal Services Act 1990 s 71: see LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) is an advocate or solicitor in Scotland of at least 10 years' standing; or (3) is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing: Reserve Forces Act 1996 s 90(2). As to the term of the appointment see s 90(3). A member of the panel must vacate his office on the day on which he attains the age of 70 years; but this is subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75 years: see COURTS vol 10 (Reissue) para 535): Reserve Forces Act 1996 s 90(4). There will be paid to members of the panel such fees, allowances and expenses (if any) as the Secretary of State may determine: s 90(5).

3 Ibid s 91(1). Consultation must take place before a member of the panel is appointed: s 91(2). As to the term of the appointment see s 91(3). A member of the panel must vacate his office on the day on which he attains the age of 70 years; but this is subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75 years: see COURTS vol 10 (Reissue) para 535): Reserve Forces Act 1996 s 91(4). There will be paid to members of the panel such fees, allowances and expenses (if any) as the Secretary of State may determine: s 91(5).

4 I.e. a panel appointed under ibid s 90 (see the text and note 2 supra) or s 91 (see the text and note 3 supra): s 92(1). Where a tribunal is hearing an appeal in respect of a determination of an application under regulations under s 78 or s 79 (see para 252 ante), the Lord Chancellor must, if requested to do so by the tribunal, appoint a serving or retired officer of any regular service or reserve force to advise the tribunal on any relevant service matters: s 92(2). In the case of an appeal tribunal which is to sit in Scotland or Northern Ireland, the members must be selected and any officer appointed by the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland, as the case may be: s 92(3). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

5 Ibid s 93(1). As to the power to make rules see further s 93(2)-(4). As to the rules that have been made see the Reserve Forces Appeal Tribunals Rules 1997, SI 1997/798 (amended by SI 2001/1149).

6 Reserve Forces Act 1996 s 94(1).

7 Ibid s 94(2). Any person guilty of an offence under s 94 is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 94(3). As to the standard scale see para 40 note 4 ante.

UPDATE

253 Reserve forces appeal tribunals

TEXT AND NOTES 2-4--Reserve Forces Act 1996 ss 90-92 amended, s 92A added: Constitutional Reform Act 2005 Sch 4 paras 240-244. See also 2005 Act s 19, Sch 7 para 4.

NOTE 5--SI 1997/798 further amended: 2005 Act Sch 4 para 270.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(3) RESERVE FORCES/(viii) Pensions and Allowances/254. Pensions and disablement allowances.

(viii) Pensions and Allowances

254. Pensions and disablement allowances.

Disablement or death suffered by a member of any reserve of army or air force officers, by any army or air force officer who has retired, by a man of the Army or Air Force Reserve, or by an army or air force pensioner¹ or a member of the long term reserve², and which is due to service as a member of the armed forces³, gives rise to the same entitlements to an award of a disablement or death pension, and to the other benefits related to such pensions, as those which apply to personnel of the regular forces or the regular air force⁴.

1 le an army or air force pensioner who is within the scope of the Reserve Forces Act 1980 s 31(2) (prospectively repealed): see para 237 ante.

2 'Long term reserve' means persons liable to be recalled for service under ibid s 34 (as amended and prospectively repealed): see para 238 ante.

3 As to when disablement or death is to be accepted as due to such service see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 4-6; and paras 277-280 post.

4 See para 273 et seq post. A person who is within one or other of the categories specified in the text (except army and air force pensioners and long term reservists) is deemed a member of the regular forces or air force when subject to military or air force law: see paras 191 ante, 307-308 post. Army and air force pensioners and long term reservists, however, derive their entitlements to the benefits in question in respect of disablement or death while recalled for service, and which is due to such service, from the fact that they are then deemed to be enlisted in the regular forces or the regular air force, as the case may be, and thus are serving as members of the armed forces: see the Reserve Forces Act 1980 ss 32(3), 34(3) (s 32(3) prospectively repealed; s 34(3) amended and prospectively repealed); and para 237 ante. As to the various forms of call out for service and training see para 232 et seq ante. For the meaning of 'regular forces' see para 191 ante; and for the meaning of 'regular air force' see para 206 ante.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(4) ATTACHMENT OF MEMBERS OF ARMED FORCES/255. Attachment of visiting forces.

(4) ATTACHMENT OF MEMBERS OF ARMED FORCES

255. Attachment of visiting forces.

Members of certain Commonwealth forces¹ or forces of the Republic of Ireland² may be attached temporarily to a home force³, or forces of specified territories⁴, if placed at the disposal of the Defence Council⁵ for that purpose⁶. Whilst so attached, they are subject to the Naval Discipline Act 1957, or to military or air force law⁷, as the case may be, and are treated, and have the like powers of command and punishment over members of the home force to which they are attached, as if they were members of that force of relative rank⁸. Where a home force and a Commonwealth or Irish force within the scope of these provisions⁹ are declared by order of the Defence Council to be serving together, any member of that Commonwealth or Irish force is treated, and has the like powers of command over members of the home force, as if he were a member of the home force of relative rank¹⁰. Further, where such forces so declared to be serving together are also declared by order of the Defence Council to be acting in combination, any officer of the Commonwealth or Irish force who is appointed to command the combined force, or any part of it, is treated, and has the like powers of command and punishment over members of the home force, as if he were an officer of the home force of relative rank and holding the same command¹¹.

1 le the forces of the following countries: Antigua, Australia, The Bahamas, Barbados, Belize, Botswana, Canada, Brunei, Republic of Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Nauru, New Hebrides (now Vanuatu), New Zealand, Nigeria, Pakistan, Papua New Guinea, St Lucia, St Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania (including Zanzibar), Tonga, Trinidad and Tobago, Tuvalu, Uganda, Western Samoa, Zambia and Zimbabwe: see the Visiting Forces (British Commonwealth) Act 1933 s 4(1) (as amended and modified by various independence Acts and modification of enactments relating to those countries). As to the Visiting Forces (British Commonwealth) Act 1933 see further paras 11, 22, 135 ante. When lawfully present in the United Kingdom with the consent of the United Kingdom government, any body, contingent or detachment of the forces of any of these countries is a visiting force for the purposes of the Visiting Forces (British Commonwealth) Act 1933: s 8(1). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

2 See *ibid* s 4(1); the Eire (Confirmation of Agreements) Act 1938 s 1; and the Ireland Act 1949 ss 1(3), 3(2) (a). As to the present status of the Republic of Ireland see *COMMONWEALTH* vol 13 (2009) PARA 728.

3 'Home forces' means the naval, military and air forces of Her Majesty raised in the United Kingdom; and 'home force' includes any body, contingent or detachment of the home forces, wherever serving: Visiting Forces (British Commonwealth) Act 1933 s 8(1).

4 *Ibid* s 4. This provision may be extended by an Order in Council to any colony, with such adaptations and modifications as may be specified so as to equate the forces of those territories to home forces for these purposes: s 5(2). 'Colony' includes any territory which is under the protection of the Crown: s 5(3). Cf para 20 note 4 ante. See also *COMMONWEALTH* vol 13 (2009) PARA 705. The colonies to which s 4 has been so extended are specified in the Visiting Forces (British Commonwealth) (Application to the Colonies, etc) Order in Council 1940, SR & O 1940/1373, Sch 1 (amended by SR & O 1942/1905). Some of the former colonies specified in the Visiting Forces (British Commonwealth) (Application to the Colonies, etc) Order in Council 1940, SR & O 1940/1373, Sch 1 (as amended), eg Sri Lanka (formerly Ceylon) and Ghana (formerly the Gold Coast), have attained independence; those countries are mentioned in note 1 supra. The remaining colonies specified in Sch 1 (as amended) are: Bermuda, the Falkland Islands, Gibraltar, the Turks and Caicos Islands, the Cayman Islands, Montserrat, St Christopher and Nevis, the Virgin Islands, St Helena and Pitcairn Island. Any Order in Council made under the Visiting Forces (British Commonwealth) Act 1933 may be revoked or varied by a subsequent order: s 8(2).

5 In the territories outside the United Kingdom specified in note 4 supra, in relation to whose forces *ibid* s 4 applies as it applies to home forces and their officers and members, the members of the Commonwealth or Irish force are placed at the disposal of the government of the territory instead of the Defence Council, and it is the governor of the territory who attaches these forces to the forces of the territory: Visiting Forces (British Commonwealth) (Application to the Colonies, etc) Order in Council 1940, SR & O 1940/1373, art 2(1), Sch 3 para 2. As to the Defence Council see para 2 ante.

6 Visiting Forces (British Commonwealth) Act 1933 s 4(2)(i) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

7 Members of a naval, military or air force of a Commonwealth country, or of any such Irish force, are subject to the Naval Discipline Act 1957, or to military or air force law, as the case may be, with such exceptions and subject to such adaptations or modifications as may be specified by Order in Council: Visiting Forces (British Commonwealth) Act 1933 s 4(3) proviso. The following Orders in Council have been made under this provision: the Visiting Forces (Royal New Zealand Air Force) Order 1940, SR & O 1940/2199 (amended by SI 1956/2044); the Visiting Forces (Military Courts-Martial) Order 1942, SR & O 1942/270 (amended by SI 1956/2043); the Visiting Forces (Royal Australian Air Force) Order 1960, SI 1960/1053; and the Visiting Forces (Canadian Military and Air Forces) Order 1960, SI 1960/1956.

8 Visiting Forces (British Commonwealth) Act 1933 s 4(3) (amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 3, Sch 2 para 9(2)). See also the Army Act 1955 s 206; the Air Force Act 1955 s 206; the Naval Discipline Act 1957 s 114(1); and para 312 post.

9 le a force of any of the countries specified in note 1 supra, or of the Republic of Ireland.

10 Visiting Forces (British Commonwealth) Act 1933 s 4(4)(a), (5). In such a case, the relative rank of the members of the home forces and of the other forces will be such as may be prescribed by regulations made by Her Majesty: s 4(5). See the Regulations dated 25 June 1935, SR & O 1935/595 (amended by SR & O 1938/1352), and the further regulations made (other than by statutory instrument) by King George VI in June 1945 prescribing the relative ranks of members of the home naval, military and air forces and the like forces of Canada, Australia, and New Zealand.

11 Visiting Forces (British Commonwealth) Act 1933 s 4(4)(b), (5) (s 4(4)(b) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt I). As to relative ranks see note 10 supra.

UPDATE

255 Attachment of visiting forces

TEXT AND NOTES 7, 8--Visiting Forces (British Commonwealth) Act 1933 s 4(3) further amended: Armed Forces Act 2006 Sch 16 para 14(3). SR & O 1942/270, SI 1960/1956 amended: SI 2009/2054.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(4) ATTACHMENT OF MEMBERS OF ARMED FORCES/256. Attachment of home forces.

256. Attachment of home forces.

The Defence Council¹ may place any member of the military or air home forces of the Crown, with his consent, at the disposal of the service authorities of another part of the Commonwealth for the purpose of being attached temporarily by those authorities to a force belonging to that part of the Commonwealth². Members of the naval home forces of the Crown may be required by the Defence Council³ to serve with any of the armed forces of any Commonwealth or other country⁴, but they may be placed at the disposal of the service authorities of another country with a view to attachment to its forces only if that country is a Commonwealth country, and then only in so far as that action is not contrary to anything in their conditions of service⁵.

1 As to the Defence Council see para 2 ante.

2 Visiting Forces (British Commonwealth) Act 1933 s 4(2)(ii) (amended in relation to members of Her Majesty's military and air forces by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 3, Sch 2 para 9(1); and further amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I). The liabilities and powers which result from such an attachment must be ascertained from the law of the country at whose disposal the member of the home forces is placed: cf the Visiting Forces (British Commonwealth) Act 1933 s 4(3). As to the Commonwealth generally see COMMONWEALTH. There is no provision for placing members of the home forces at the disposal of the service authorities of the Republic of Ireland for the purpose of attachment to the Irish forces.

3 On a foreign station, this requirement may be imposed by the Commander-in-Chief or the senior naval officer present: Naval Discipline Act 1957 s 121(1).

4 Ibid s 121(1). A person does not, by reason only of the imposition upon him of this requirement, cease to be subject to the Naval Discipline Act 1957: s 121(2).

5 Visiting Forces (British Commonwealth) Act 1933 s 4(2)(ii). This provision is not amended in relation to Her Majesty's naval forces (cf note 2 supra), and is not prejudiced by the Naval Discipline Act 1957 (s 121(1)). As to the liabilities and powers of any naval personnel of the home forces attached to the forces of any Commonwealth country see note 2 supra.

UPDATE

256 Attachment of home forces

TEXT AND NOTES 3, 4--Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

TEXT AND NOTE 5--Visiting Forces (British Commonwealth) Act 1933 s 4(2)(ii) amended: Armed Forces Act 2006 Sch 16 para 14(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/ (5) INQUIRIES/257. Nature and functions of service tribunals of inquiry.

(5) INQUIRIES

257. Nature and functions of service tribunals of inquiry.

An inquiry may be instituted into any matter deemed by the service authority convening the inquiry¹ to require investigation, and the investigating body may be directed to express an opinion on any question arising out of any matter referred to it². The investigating body may be either a board of inquiry, which will normally be convened only in relation to matters of considerable importance and must be convened in certain circumstances, or a regimental inquiry (in the military forces) or a unit inquiry (in the air forces)³.

1 The convening authority is normally the Defence Council or any naval, military or air force officer empowered or authorised by rules made under the Army Act 1955 or the Air Force Act 1955 by the Secretary of State (see the Army Act 1955 s 135(1), (6); and the Air Force Act 1955 s 135(1), (6)) or regulations made by the Defence Council (see the Army Act 1955 s 137(1); and the Air Force Act 1955 s 137(1)). As to the Defence Council and the Secretary of State see para 2 ante. The rules and regulations at present in operation are, in respect of military forces (including the Royal Marines), the Board of Inquiry (Army) Rules 1956, SI 1956/630 (amended by SI 1961/2469; SI 1972/847; SI 1982/366), and, in respect of the air forces, the Board of Inquiry (Air Force) Rules 1956, SI 1956/579 (amended by SI 1961/2436; SI 1982/370). Both sets of rules are supplemented by regulations which are not made by statutory instrument and are not recorded in this work. As to the authorities empowered to convene tribunals of inquiry see para 260 post.

2 Army Act 1955 ss 135(1)(d), 137(1); Air Force Act 1955 ss 135(1)(d), 137(1); Board of Inquiry (Army) Rules 1956, SI 1956/630, rr 3, 4(2); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, rr 3, 4(2); Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I.

3 See the Army Act 1955 ss 135, 137; the Air Force Act 1955 ss 135, 137; and paras 258-259 post. There appears to be nothing to preclude the convening of a board of inquiry after a regimental or unit inquiry has already been held into the same matter.

UPDATE

257-262 Inquiries

Army Act 1955 ss 135-137, Air Force Act 1955 ss 135-137 repealed: Armed Forces Act 2006 Sch 17. As to service inquiries, see now the Armed Forces Act 2006 s 343; and PARA 190.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/ (5) INQUIRIES/258. Occasions for board of inquiry.

258. Occasions for board of inquiry.

A board of inquiry must be convened if any person subject to military or air force law¹ has been continuously absent without leave for a period of 21 days, in order to investigate his absence and any deficiency in equipment or other public or service property issued to him for his use².

A board of inquiry must also be convened to investigate the capture by the enemy of any person subject to military or air force law and his conduct during captivity, if on his return from captivity the authority which has power to convene the board considers that there are reasonable grounds for suspecting: (1) that he was captured through disobedience to orders, or wilful neglect of his duty; (2) that, having been captured, he failed to take reasonable steps to rejoin Her Majesty's forces; or (3) that he served or aided the enemy in the prosecution of hostilities in any manner not authorised by international usage³.

If a person dies in a military or air force establishment in any country or territory outside the United Kingdom where an inquiry into the death is not required to be held by any civil authority, a board of inquiry must be convened to inquire into his death⁴.

A board may be convened with reference to any matter which the convening authority decides to refer to a board⁵.

1 As to the persons subject to military and air force law see paras 307-308 post.

2 Army Act 1955 s 135(1)(a); Air Force Act 1955 s 135(1)(a); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 4(1)(a); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 4(1)(a). Both sets of rules are supplemented by regulations which are not made by statutory instrument and are not recorded in this work. Where a board reports that a person has been so absent the report is recorded and retained: see the Army Act 1955 s 136(1); Air Force Act 1955 s 136(1); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 16; Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 16; Queen's Regulations for the Army 1975 para 5.011; Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 27 para 1993. In the army, the certified copy of the report kept with the absentee's unit documents is destroyed three months after disciplinary action has been taken against him; another copy is retained, if the absentee is an officer, on his personal file at the Army Personnel Centre; if he is a soldier it is retained with his documents at the Army Personnel Centre and destroyed after three years: see the Queen's Regulations for the Army 1975 paras 5.011b-5.011c. The record of the report of the board of inquiry which is entered in the service books, signed by the commanding officer, is evidence of the facts stated in it, and a certified copy of it is evidence of the record: Army Act 1955 s 198(5); Air Force Act 1955 s 198(5). The record in the service books is equivalent to a conviction by court-martial for desertion, unless the absentee subsequently surrenders or is arrested: Army Act 1955 s 136(2); Air Force Act 1955 s 136(2). As to the offence of desertion see para 404 post.

3 Army Act 1955 s 135(1)(b); Air Force Act 1955 s 135(1)(b); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 4(1)(b); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 4(1)(b).

4 Army Act 1955 s 135(1)(c); Air Force Act 1955 s 135(1)(c); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 4(1)(c); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 4(1)(c). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 Army Act 1955 s 135(1)(d); Air Force Act 1955 s 135(1)(d); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 4(2); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 4(2). See also para 257 note 3 ante. As to the convening authority see paras 257 note 1 ante, 260 post. As to the matters which are usually to be investigated by a board of inquiry unless the authority concerned decides that no inquiry is necessary or that a regimental inquiry will suffice see the Queen's Regulations for the Army 1975 Ch 5 Annex A para 14. As Annex A para 14 is stated to be declaratory of the policy of the Ministry of Defence, the criteria set out in it presumably therefore also apply to the Royal Air Force. As to cases of accidents to service aircraft where there is a civil aviation element involved see AIR LAW vol 2 (2008) PARA 604. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

UPDATE

257-262 Inquiries

Army Act 1955 ss 135-137, Air Force Act 1955 ss 135-137 repealed: Armed Forces Act 2006 Sch 17. As to service inquiries, see now the Armed Forces Act 2006 s 343; and PARA 190.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/ (5) INQUIRIES/259. Occasions for regimental or unit inquiry.

259. Occasions for regimental or unit inquiry.

A regimental or unit inquiry may not be convened for any purpose for which a board of inquiry must be convened or for which such a board has been convened, or to investigate the absence, or the capture by the enemy, of any person subject to military or air force law¹.

¹ Army Act 1955 s 137(1) proviso; Air Force Act 1955 s 137(1) proviso. As to the persons subject to military and air force law see paras 307-308 post.

UPDATE

257-262 Inquiries

Army Act 1955 ss 135-137, Air Force Act 1955 ss 135-137 repealed: Armed Forces Act 2006 Sch 17. As to service inquiries, see now the Armed Forces Act 2006 s 343; and PARA 190.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/ (5) INQUIRIES/260. Convening of tribunals of inquiry.

260. Convening of tribunals of inquiry.

Normally a board of inquiry may be convened only by the Defence Council or by an officer not below the rank of colonel or group captain or naval officer of corresponding rank who is commanding any area or formation of troops in Her Majesty's forces or any other officer acting in his place¹. A board may, however, be convened to investigate and report on the absence without leave and the deficiency in equipment of any person subject to military or air force law who has been absent without leave continuously for 21 days by any officer commanding a unit or detachment of Her Majesty's military or air forces, as the case may be².

The convening of a board of inquiry may be deferred, or the proceedings of a board of inquiry or of a regimental or unit inquiry which has been convened may be stayed, if the matter with which it is concerned is the subject of any service or civil police investigation, or of any service or civil proceedings, and on the completion of that investigation or of those proceedings the authority authorised to convene a board of inquiry or a regimental or unit inquiry is not required to convene a board of inquiry, or may dissolve any board or regimental or unit inquiry already convened, as the case may require, if satisfied that no such inquiry is necessary³.

¹ Army Act 1955 s 135(1); Air Force Act 1955 s 135(1) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I). See also the Board of Inquiry (Army) Rules 1956, SI 1956/630, r 6(1)(a)-(c); and the Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 6(1)(a)-(c). Both sets of rules are supplemented by regulations which are not made by statutory instrument and are not recorded in this work. As to the Defence Council see para 2 ante.

² Board of Inquiry (Army) Rules 1956, SI 1956/630, r 6(1)(d)(i); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 6(1)(d)(i). Such an officer may also be authorised to convene a board of inquiry with reference to any particular matter, or to matters of any specified class or description, by the Defence Council or any officer empowered to convene such a board: Board of Inquiry (Army) Rules 1956, SI 1956/630, r 6(1)(d)(ii); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 6(1)(d)(ii).

³ Board of Inquiry (Army) Rules 1956, SI 1956/630, r 5(1); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 5(1). These provisions are not applicable to the convening of a board of inquiry with reference to a case of absence without leave for more than 21 days and deficiency of equipment or property (see para 258 text and note 2 ante); but if, in such a case, the authority having power to convene a board of inquiry is satisfied that the absence has terminated, or that the absentee belongs or is attached to another of Her Majesty's forces whose proper authorities are holding or will hold an inquiry into the absence, the authority need not convene a board of inquiry and may dissolve a board which has already been convened: Board of Inquiry (Army) Rules 1956, SI 1956/630, r 5(2); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 5(2).

UPDATE

257-262 Inquiries

Army Act 1955 ss 135-137, Air Force Act 1955 ss 135-137 repealed: Armed Forces Act 2006 Sch 17. As to service inquiries, see now the Armed Forces Act 2006 s 343; and PARA 190.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/ (5) INQUIRIES/261. Composition of tribunals of inquiry.

261. Composition of tribunals of inquiry.

A board of inquiry consists of a president, who is not below the rank of captain or corresponding air force or naval rank¹ and who is subject to military or air force law or the Naval Discipline Act 1957, and not fewer than two other members, each of whom is either so subject or, although not so subject, is in the service of the Crown². A regimental or unit inquiry may consist of one or more persons: (1) the president, who may be either a person who is subject to military law, air force law or the Naval Discipline Act 1957 as an officer, or a person who, although not so subject, is in the service of the Crown; and (2) any other member or members who must be either persons subject to military law, air force law or the Naval Discipline Act 1957³, or persons who, although not so subject, are in the service of the Crown⁴.

1 As to corresponding ranks see para 1 note 7 ante.

2 Army Act 1955 s 135(2); Air Force Act 1955 s 135(2); Army and Air Force Act 1961 s 26(1). A member (other than the president) who is subject to service law must be so subject either as an officer or a warrant officer: Board of Inquiry (Army) Rules 1956, SI 1956/630, r 7(1) (amended by SI 1961/2469; SI 1972/847); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 7(1) (amended by SI 1961/2436). Both sets of rules are supplemented by regulations which are not made by statutory instrument and are not recorded in this work. As to the persons subject to military or air force law or to the Naval Discipline Act 1957 see paras 306-308 post.

3 He not necessarily as an officer.

4 Army Act 1955 s 137(1); Air Force Act 1955 s 137(1) (both amended by the Army and Air Force Act 1961 s 26(2); and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I).

UPDATE

257-262 Inquiries

Army Act 1955 ss 135-137, Air Force Act 1955 ss 135-137 repealed: Armed Forces Act 2006 Sch 17. As to service inquiries, see now the Armed Forces Act 2006 s 343; and PARA 190.

261 Composition of tribunals of inquiry

NOTE 2--Army and Air Force Act 1961 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/ (5) INQUIRIES/262. Evidence and procedure before tribunals of inquiry.

262. Evidence and procedure before tribunals of inquiry.

Any evidence which the board or the inquiry considers relevant may be given before a board of inquiry or a regimental or unit inquiry, whether oral or written, and whether or not it would be admissible in a civil court¹. Before a board of inquiry, the evidence must be given on oath or on affirmation (on the same grounds as would render an affirmation in place of an oath permissible in a civil court), except in certain circumstances where the evidence of a child may be received without his taking an oath². At a regimental or unit inquiry there is no power to administer an oath or an affirmation to a witness unless the authority convening the inquiry so directs, in which case the evidence must be given on oath or affirmation, except in certain circumstances where the evidence of a child may be received without oath or affirmation³. Evidence given on oath or affirmation before a board of inquiry⁴ or a regimental or unit inquiry can be the subject of trial by court-martial on a charge of committing a civil offence (that is, perjury), but, apart from this, evidence given before such a board or inquiry is not admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority⁵.

Any witnesses and certain other persons who may be affected by the findings of a board of inquiry or regimental or unit inquiry have a right to be given notice of the inquiry, and must be given an opportunity of being present and represented at the sittings⁶. Such a person has a right to give evidence and produce any witness to give evidence on the matters that affect him, and he or his representative may question witnesses or give evidence on those matters, but a representative may not address the board or inquiry except with the permission of the president⁷.

The proceedings of a board of inquiry or of a regimental or unit inquiry, including the findings and any opinion expressed, must be recorded and signed by the president and other members (if any) and forwarded to the authority who convened the board or inquiry⁸.

1 Army Act 1955 ss 135(3)(a), 137(2); Air Force Act 1955 ss 135(3)(a), 137(2); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 12; Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 12. Both sets of rules are supplemented by regulations which are not made by statutory instrument and are not recorded in this work.

2 Army Act 1955 s 135(3)(a); Air Force Act 1955 s 135(3)(a); Board of Inquiry (Army) Rules 1956, SI 1956/630, r 13(1), (3) (amended by SI 1961/2469; SI 1989/256); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 13(1), (3) (amended by SI 1961/2436; SI 1989/257). A witness who objects to taking an oath is no longer required to state as the grounds of his objection that he has no religious belief, or that the taking of an oath is contrary to his religious belief before being permitted to affirm. As to the evidence of children see the Army Act 1955 s 93(2) proviso; the Air Force Act 1955 s 93(2) proviso; and para 375 post.

3 Army Act 1955 s 137(2); Air Force Act 1955 s 137(2). As to the evidence of children see note 2 supra.

4 'Board of inquiry' means a board of inquiry convened under the Army Act 1955 s 135, the Air Force Act 1955 s 135, or the Queen's Regulations for the Royal Navy: Army Act 1955 s 135(5); Air Force Act 1955 s 135(5) (both substituted by the Armed Forces Act 2001 s 34, Sch 6 paras 37, 38).

5 Army Act 1955 ss 135(5), 137(3) (s 135(5) as substituted: see note 4 supra); Air Force Act 1955 ss 135(5), 137(3) (s 135(5) as substituted: see note 4 supra); Armed Forces Act 1971 ss 71(1), 78(4)(a), Sch 4 Pt I. As to the preferring of a charge of perjury under the Army Act 1955 or the Air Force Act 1955 see para 422 post. A statement made before a board of inquiry or a regimental or unit inquiry may be admissible in a civil court, if that court is satisfied that it was made freely and voluntarily: see *R v Colpus and Boorman* [1917] 1 KB 574, CCA (decided on similar provisions in earlier legislation, now repealed).

6 Army Act 1955 ss 135(4), 137(3) (s 135(4) amended by the Armed Forces Act 1981 s 23(1)); Air Force Act 1955 ss 135(4), 137(3) (s 135(4) amended by the Armed Forces Act 1981 s 23(1)). These provisions provide, however, that the rules (for boards of inquiry) or regulations (for regimental or unit inquiries) may specify at what part of the sittings such persons may be permitted to be present. In so far as these provisions apply to persons other than witnesses, the presence only of persons within the following categories is authorised: (1) persons subject to military or air force law or the Naval Discipline Act 1957; (2) persons who, although not so subject, are in the service of the Crown and may be affected in character or professional reputation by the findings; and (3) persons who, although not so subject, are employed by the Civil Aviation Authority in connection with its provision of air navigation services (see AIR LAW vol 2 (2008) PARA 55 et seq), and may be affected as previously stated: Army Act 1955 s 135(4) (as so amended); Air Force Act 1955 s 135(4) (as so amended). See also the Board of Inquiry (Army) Rules 1956, SI 1956/630, r 11 (amended by SI 1961/2469; SI 1982/366); and the Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 11 (amended by SI 1961/2436; SI 1982/370). 'Represented', in these orders and regulations, means represented by an officer or by a barrister or solicitor and includes, in the case of a civilian in Crown service, representation by a trade union or staff association representative: see the Board of Inquiry (Army) Rules 1956, SI 1956/630, r 2(2); and the Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 2(2). The convening officer or the president may give permission for attendance at a specified part only of the proceedings: Board of Inquiry (Army) Rules 1956, SI 1956/630, r 11(1); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 11(1).

7 Board of Inquiry (Army) Rules 1956, SI 1956/630, r 11(2); Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 11(2).

8 See the Army Act 1955 s 135(3)(b); the Air Force Act 1955 s 135(3)(b); the Board of Inquiry (Army) Rules 1956, SI 1956/630, r 15; and the Board of Inquiry (Air Force) Rules 1956, SI 1956/579, r 15. As to entry in service books of proceedings in the case of a person who has been absent for 21 days see para 258 note 2 ante.

UPDATE

257-262 Inquiries

Army Act 1955 ss 135-137, Air Force Act 1955 ss 135-137 repealed: Armed Forces Act 2006 Sch 17. As to service inquiries, see now the Armed Forces Act 2006 s 343; and PARA 190.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(i) In general/263. Varieties of pensions; authority for the granting of pensions.

(6) PENSIONS AND SERVICE CHARITIES

(i) In general

263. Varieties of pensions; authority for the granting of pensions.

There are two varieties of pensions¹, grants and allowances in existence in relation to former members of the armed forces and their dependants:

- 51 (1) those granted by the service authorities², which comprise:
 - 1 (a) awards for which all members of the armed forces and their dependants may become eligible merely by virtue of service (commonly called service pensions); and
 - 2 (b) awards in respect of disablement or death due to service, other than service during the period of the 1914-18 war or in any earlier war, or since 2 September 1939, that is due to service prior to 2 September 1939 otherwise than in war³;
- 52 (2) those granted by the Secretary of State for Defence⁴, namely awards in respect of disability or death due to service during the 1914-18 war or in any earlier war, or to any service since 2 September 1939 (commonly called war pensions, or death and disablement pensions)⁵.

Awards of each of these varieties are granted partly by virtue of the royal prerogative and partly by statutory authority⁶. Such authority, however, does no more than authorise the grant of a pension or allowance and does not give any member of the armed forces, or any dependant of any such member, a right to the grant of any pension or other award⁷.

1 For these purposes, 'pension' is used (except where otherwise indicated by the context) compendiously to describe retired pay (the expression used to denote the pensions of retired officers of the regular forces and the regular air force), pensions (used, in a narrower sense, to denote awards by way of pensions to non-commissioned officers, soldiers and airmen), gratuities, allowances and any other such grants.

2 As to the service authorities see para 266 post.

3 As to service pensions see para 266 et seq post. As to the duration of the 1914-18 war see note 7 infra.

4 As to the Secretary of State for Defence see paras 2 ante, 265 note 6 post.

5 As to war and disablement pensions see para 273 et seq post.

6 The grant of pensions to officers of the regular forces is made in pursuance of royal warrant depending solely on the royal prerogative. The grant of pensions to soldiers of the regular forces is made in pursuance of royal warrant on the authority of the Pensions and Yeomanry Pay Act 1884 s 2(1). To personnel of the reserve forces pensions may be granted on the authority of the Reserve Forces Act 1996 s 8. Pensions may be granted to all personnel of the regular air force by virtue of the Air Force (Constitution) Act 1917, and the Pensions and Yeomanry Pay Act 1884 s 2(1), as applied to the air forces by the Air Force (Application of Enactments) (No 2) Order 1921, SR & O 1921/1585, and are granted by order of Her Majesty. At the date at which this volume states the law, no provision had been made for the grant of pensions or other grants or allowances to former members of the Army Reserve, the Air Force Reserve, the Territorial Army or the Royal Auxiliary Air Force, or their dependants, except in respect of disablement or death due to service. Any instruments made under any of these enactments may be revoked, amended or re-enacted: see the Interpretation Act 1978 s 14; and, as

regards certain enactments relating to the reserve and auxiliary forces, the Reserve Forces Act 1980 s 155 (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11: see para 224 ante). The same applies to royal warrants made under the royal prerogative. Such instruments are not required to be made by statutory instrument: see the Statutory Instruments Regulations 1947, SI 1948/1, reg 2(3)(c), Schedule (substituted by SI 1982/1728).

Her Majesty may also provide by Order in Council for pensions and other grants in respect of disablement or death due to service with the armed forces and their nursing and auxiliary forces: Social Security (Miscellaneous Provisions) Act 1977 s 12(1). This power must be exercised by statutory instrument, and has been exercised in respect of death or disablement due to such service between 4 August 1914 and 30 September 1921, or after 2 September 1939: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883. Modifications in enactments relating to such pensions may be made by Order in Council made as statutory instruments (Social Security (Miscellaneous Provisions) Act 1977 s 12(2)), and an Order in Council made in pursuance of s 12(1) may vary or revoke any instrument made otherwise than under s 12, so far as it relates to such pensions (s 12(3)).

Provisions has been made for the United Kingdom government to assume responsibility for pensions arising from service in (inter alia) India, Pakistan or Burma, and payable to persons now living outside those territories or Aden: see the Pensions (India, Pakistan and Burma) Act 1955 s 1 (repealed), and the Overseas Pensions Act 1973 s 2(1), (2)(a), (b), Sch 1. As to appeals in respect of claims for war pensions in connection with the war service of members of the former armed forces of Burma and India see para 292 note 2 post. See also provisions relating to disclosure of information on pensions to members of the armed forces, ie the Occupational Pension Schemes (Disclosure of Information) Regulations 1996, SI 1996/1655, and the Occupational Pension Schemes (Managers) Regulations 1986, SI 1986/1718 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) paras 555, 800). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

7 This principle is subject to the qualification that in the case of a pension or allowance granted in respect of disablement or death due to service during the 1914-18 war (ie between 4 August 1914 and the thirtieth day after 31 August 1921: see the War Pensions Act 1920 s 2; the Termination of the Present War (Definition) Act 1918 s 1(1); and the Date of Termination of War Order 1921, SR & O 1921/1276), or due to service since 2 September 1939, there is a statutory right to receive the pension once it has been awarded: see the War Pensions (Administrative Provisions) Act 1919 s 7; the War Pensions Act 1920 s 8; and the Pensions Appeal Tribunals Act 1943 s 11. This right is subject to any conditions imposed by the warrant or order under which the grant was made. Nevertheless the authority for the award, even of a disablement or death pension, is still the Crown prerogative, and the grant of it is discretionary: see *Griffin v Lord Advocate* 1950 SC 448 at 450; approved in *Jennings v Minister of Pensions* (2 February 1953, unreported), per Parker J. See also para 217 note 3 ante. The Pensions and Yeomanry Pay Act 1884 s 2(4) (repealed), as applied to the air forces by the Air Force (Application of Enactments) (No 2) Order 1921, SR & O 1921/1585, conferred a statutory right upon any soldier or airman to receive such pension as was fixed by any order made under the Act applying to him and in force at the time of his enlistment, but that right was removed in relation to soldiers and airmen who enlisted on or after 1 October 1931 by the National Economy (Soldiers' and Airmen's Pensions) Order 1931, SR & O 1931/816.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

263 Varieties of pensions; authority for the granting of pensions

NOTE 7--War Pensions Act 1920 s 8 amended: Civil Partnership Act 2004 Sch 26 para 12. Pensions Appeal Tribunals Act 1943 s 11 amended: SI 2008/2833.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(i) In general/264. Rates of pension.

264. Rates of pension.

The rates of service retired pay, pensions and other grants which may be granted in respect of officers and other ranks of the regular forces are laid down by royal warrant¹, and those in respect of the regular air force are laid down by regulations². The rates specified in these instruments are, however, to some extent overridden by the provisions as to guaranteed minimum pensions benefits³. In respect of disablement and death pensions and other grants, the rates applicable to all ranks of all the armed forces, in respect of disablement or death due to service between 4 August 1914 and 30 September 1921⁴, or after 2 September 1939, are laid down by Order in Council⁵.

1 See the Army Pensions Warrant 1977. In addition to the provisions as to the rates normally payable, that warrant also provides for certain annual increases comparable to those authorised by the Pensions (Increase) Act 1971 (which does not apply to the armed forces), and for compensation for redundancy: see para 268 et seq post. As to the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 614 et seq. For the meaning of 'regular forces' see para 191 ante.

2 See the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 38 paras 2926-2990, Ch 39 paras 3016-3059, Ch 41 paras 3064 et seq, Ch 42 paras 3121 et seq, App 45. These regulations also contain provisions as to annual increases of service retired pay and pensions (though not as to compensation for redundancy) equivalent to those for the regular military forces: see note 1 supra; and para 268 post. For the meaning of 'regular air force' see para 206 ante.

3 See para 268 post.

4 The date designated to denote the end of the 1914-18 war was 30 September 1921: see para 263 note 7 ante.

5 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended); and paras 263 ante, 265-266 post. This order extends not only to members of the regular naval, marine, military and air forces of the Crown and their dependants, but also to those of the nursing, reserve or auxiliary forces of the Crown and their dependants: see the Preamble. Where, however, a member of a reserve or auxiliary force is not called out for permanent service (as to which see para 232 et seq ante), certain provisions of that order do not apply to him (see art 4(4)), and special provisions apply as to the determination of the member's rank for certain purposes (see art 7(3)). See also the definition of 'member of the reserve or auxiliary forces' contained in art 1(2), Sch 3 item 34.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(i) In general/265. Forfeiture of pensions.

265. Forfeiture of pensions.

Pensions awarded in respect of members of the armed forces are subject to forfeiture on conviction for treason¹, and according to any provisions of royal warrants, Orders in Council² or orders of Her Majesty³ authorising forfeiture⁴. Any pension so forfeited may be restored either in whole or in part⁵. During such time as any person, whose pension was awarded or administered by the Secretary of State for Defence⁶ and has been forfeited, is undergoing imprisonment, the Secretary of State may pay or apply any part of the pension, or any allowance payable to that person during the continuance of the pension, to, or for the benefit of, his wife, children or other dependants⁷.

1 See the Forfeiture Act 1870 s 2; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1818. As to forfeiture etc of naval and marine pensions see paras 163-164 ante.

2 Ie Orders in Council under the Naval and Marine Pay and Pensions Act 1865 s 3 (see para 162 ante) or under the Social Security (Miscellaneous Provisions) Act 1977 s 12(1) (see para 263 note 6 ante).

3 Ie orders of Her Majesty made under the Air Force (Constitution) Act 1917 s 2: see para 263 note 6 ante.

4 As to the warrants and orders in force see para 264 ante. See also the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(1) (amended by SI 2001/409).

5 Criminal Justice Act 1948 s 70(2). Authority for restoration when forfeiture has occurred in accordance with royal warrant, Order in Council or other order may be conferred by the warrant or order: see eg the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 62(2), (3) (art 62(2) substituted, and art 62(3) added, by SI 2001/409).

6 The administration of disablement and death pensions and other grants for disablement or death due to war service, which was originally vested in the Minister of Pensions under the Naval and Military War Pensions, &c (Transfer of Powers) Act 1917 s 1 (repealed) was (on the dissolution of the Ministry of Pensions in 1953) transferred to the Minister of Pensions and National Insurance; subsequently (on the dissolution of the Ministry of Pensions and National Insurance) this function was transferred to the Minister of Social Security (see the Supplementary Benefit Act 1966 s 2(1)(a)). His functions, in turn, were transferred (on the creation in 1968 of the Department of Health and Social Security) to the Secretary of State for Social Services; and later to the Secretary of State for Social Security: see the Secretary of State for Social Services Order 1968, SI 1968/1699; and the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843, art 3, Sch 2. Functions of the Secretary of State for Social Security relating to war pensions have been transferred to the Secretary of State for Defence: see the Transfer of Functions (War Pensions etc) Order 2001, SI 2001/3506, art 2(a). As to the Secretary of State see para 2 ante.

7 War Pensions Act 1920 s 7(2), (3).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

265 Forfeiture of pensions

TEXT AND NOTE 7--War Pensions Act 1920 s 7(2) amended: Civil Partnership Act 2004 Sch 26 para 11.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/266. Administration of service pensions.

(ii) Service Pensions

266. Administration of service pensions.

Any pension or award in respect of age, length of service or special service, or attached to any medal or other decoration, whether payable to persons who have been officers or men of the armed forces or their widows, children or other dependants¹, is administered by the service authorities². The same authorities also administer pensions and other awards in respect of disablement or death suffered during service in the armed forces, other than service during the period of the 1914-18 war or in any earlier war, or during any form of service after 2 September 1939³. The pensions of army and air force pensioners remain payable in full even while they are recalled to service⁴.

Provision is made for the payment of small sums outstanding at death to the person appearing to be beneficially entitled to them without the necessity of obtaining probate or the taking out of letters of administration⁵. Annuities and additional pensions payable to holders of the Victoria Cross, the George Cross and certain other awards for gallantry were formerly disregarded for all purposes of the Income Tax Acts⁶.

¹ I.e. a service pension for the purposes of the Ministry of Pensions Act 1916: see s 9(2) (repealed). As to the payment of a servicewoman's pension to her male survivor see *Howard v Ministry of Defence* [1995] ICR 1074, [1995] IRLR 570, EAT.

² 'Service authorities' means, in relation to the military forces, the Defence Council, the Secretary of State for Defence (see para 2 ante) and the Commissioners of the Royal Hospital for Soldiers at Chelsea (as to which see para 270 post (in-pensioners), and para 274 post (out-pensioners)); and, in relation to the air forces, the Defence Council and the Secretary of State for Defence: see the enactments cited in para 274 note 4 post; and see also the Army Pensions Act 1914 s 1 (repealed); the Air Force (Constitution) Act 1917 s 2(3); and the Defence (Transfer of Functions) Act 1964 s 1(3). See also the provisions relating to disclosure of information on pensions to members of armed forces: para 263 note 6 ante.

³ See para 273 post. As to the duration, for this purpose, of the 1914-18 war see para 263 note 7 ante.

⁴ Reserve Forces Act 1980 s 31(5) (repealed, as from a day to be appointed, by the Reserve Forces Act 1996 s 131(2), Sch 11).

⁵ See para 218 ante. Regulations have been made with reference to any personal estate held under the control of the Secretary of State for Commonwealth and Foreign Affairs: see the Military Pensions (Commonwealth Relations Office) Regulations 1959, SI 1959/735. These regulations apply mainly to deceased members of the former Indian forces. In so far as the functions of the Secretary of State under the Pensions and Yeomanry Pay Act 1884 s 4 (see para 218 ante) relate to persons whose pensions are payable by virtue of any superannuation scheme made, or treated as having been made, under the Overseas Pensions Act 1973 (see para 263 ante; and COMMONWEALTH), they are transferred to the Minister of Overseas Development: Minister of Overseas Development Order 1974, SI 1974/1264, art 2(5).

⁶ See the Income and Corporation Taxes Act 1988 s 317 (repealed for the purposes of income tax for the year 2003-2004 and subsequent years of assessment by the Income Tax (Earnings and Pensions) Act 2003 ss 722, 724(1), Sch 6 Pt 1 paras 1, 41, Sch 8 Pt 1); and INCOME TAXATION vol 23(2) (Reissue) para 1228. See also para 273 note 2 post.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

266 Administration of service pensions

TEXT AND NOTES--The Armed Forces (Pensions and Compensation) Act 2004 makes provision for the establishment of pension and compensation schemes for the armed or reserve forces: see PARA 266A.

NOTE 2--Defence (Transfer of Functions) Act 1964 s 1(3) amended: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/266A. Pension and compensation schemes.

266A. Pension and compensation schemes.

The Secretary of State may by order establish schemes¹ which, in respect of a person's service in the armed forces², provide (1) for benefits, in the form of pensions or otherwise, to be payable to or in respect of him on termination of service or on death or retirement³, or (2) for payments to be made towards the provision of such benefits⁴.

The Secretary of State may by order establish schemes⁵ which provide for benefits to be payable to or in respect of a person by reason of his illness or injury (whether physical or mental), or his death, which is attributable (wholly or partly) to his service in the armed forces or the reserve forces⁶.

Payments due from a scheme may be made in respect of a member, or former member, of the armed or reserve forces to whom a sum not exceeding £5,000 is due by way of arrears of pay, pension or other benefits payable in respect of his service⁷.

There are restrictions on the power of the Secretary of State to modify an armed forces pension scheme in such a way as to affect any entitlement, accrued rights or pension credit rights of any member of the scheme acquired before the power is exercised⁸.

1 Such a scheme is referred to as an armed forces pension scheme: Armed Forces (Pensions and Compensation) Act 2004 s 1(1). See the Armed Forces Early Departure Payments Scheme Order 2005, SI 2005/437 (amended by SI 2006/717, SI 2008/229, SI 2009/544); the Armed Forces Pension Scheme Order 2005, SI 2005/438 (amended by SI 2006/717, SI 2007/2608, SI 2008/229, SI 2009/544); and the Armed Forces Redundancy Scheme Order 2006, SI 2006/55 (amended by SI 2006/717). As to the Gurkha Pension Scheme see *R (on the application of British Gurkha Welfare Society) v Ministry of Defence* [2010] EWHC 3 (Admin), [2010] All ER (D) 29 (Jan).

2 I.e. the naval, military or air forces of the Crown, but not the reserve forces: 2004 Act s 11.

3 See SI 2006/55; and NOTE 1.

4 2004 Act s 1(1). The Secretary of State may provide for any scheme under s 1 to be administered by another person: s 1(3). As to the making of orders see s 10.

5 Such a scheme is referred to as an armed and reserve forces compensation scheme: s 1(2).

6 Ibid s 1(2). See the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, SI 2005/439 (amended by SI 2006/1438, SI 2007/2609, SI 2008/39, SI 2008/2160, SI 2008/2683, SI 2008/2942). As to the relevant date for assessing injuries see *Duncan v Secretary of State for Defence* [2009] EWCA Civ 1043, [2009] All ER (D) 121 (Oct).

The Secretary of State may provide for any scheme under the 2004 Act s 1 to be administered by another person: s 1(3).

7 See ibid s 2. The Navy and Marines (Property of Deceased) Act 1865 ss 3, 5-11 (see PARA 171) have effect in relation to the due amount as if it were payable by the Secretary of State, and the Secretary of State may give directions to the administrator as to the payment of that amount: 2004 Act s 2(2). The Pensions and Yeomanry Pay Act 1884 s 4 (see PARA 218) has effect in relation to the due amount as if it were held by or under the control of the Secretary of State, and the Secretary of State may give directions to the administrator as to the payment of the due amount: s 2(3).

8 See ibid s 3(1). 'Entitlement', 'accrued rights', 'pension credit rights' and 'member' have the same meaning as in the Pensions Act 1995 Pt 1 (ss 1-125) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 599 et seq): 2004 Act s 3(3). For the purposes of the Armed Forces (Pensions and Compensation) Act 2004 s 3(1), the prescribed manner of the exercise of the power to modify a pension scheme established under s 1(1) is any

modification to the way that adjustments for inflation are calculated for the purposes of (1) determining final pensionable earnings; (2) increasing pensions: Armed Forces (Pensions) (Prescribed Modification) Order 2009, SI 2009/262, art 2. 'Final pensionable earnings' has the meaning given in the armed forces pension scheme r A.4 established by SI 2005/438: SI 2009/262 art 1(2).

The power to modify a scheme may not be exercised unless (1) the consent requirements are satisfied in respect of the exercise of the power on that occasion in that manner, or (2) the scheme is modified in the prescribed manner: Armed Forces (Pensions and Compensation) Act 2004 s 3(2). The consent requirements are those prescribed for the purpose of obtaining the consent of members of the scheme to its modification: s 3(2). 'Prescribed' means prescribed by an order under s 1: s 3(3). See SI 2005/438; and NOTE 1.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/267. Relation between the army and air force service pension schemes and retirement pensions under the Social Security Contributions and Benefits Act 1992.

267. Relation between the army and air force service pension schemes and retirement pensions under the Social Security Contributions and Benefits Act 1992.

Service in the armed forces of the Crown is insurable employment for the purposes of social security law¹. When the system of graduated retirement benefits superimposed upon the basic flat rate retirement pensions was introduced², the army and air force pension schemes were modified³ to enable them to be contracted out of the graduated retirement benefits scheme, by ensuring that the army and air force schemes provided equivalent pension benefits⁴.

1 See the Social Security Contributions and Benefits Act 1992 s 116; and SOCIAL SECURITY AND PENSIONS VOL 44(2) (Reissue) para 22.

2 Ie by the National Insurance Act 1959. This system has been abolished.

3 The schemes were modified pursuant to *ibid* ss 7(2), 8(1) (both repealed). These provisions provided for 'non-participating employments' to be contracted out of the graduated retirement benefit scheme under the National Insurance Act 1959, if service in them provided those employed with retirement pensions as favourable as those to be derived from graduated contributions under the Act. These provisions were replaced by those contained in the National Insurance Act 1965 ss 56, 57 (repealed, but with savings for regulations made thereunder).

4 See the National Insurance (Modification of the Army Pension Scheme) Regulations 1961, SI 1961/323; and the National Insurance (Modification of the Air Force Pension Scheme) Regulations 1961, SI 1961/391. These regulations restrict the power to terminate or suspend so much of the service pension as is payable in respect of any period after an officer, soldier or airman reaches statutory retirement age and is equal to the amount of the graduated retirement benefit which would have been payable but for the fact that the employment of the person in question was a non-participating employment. The right of commutation of pensions in respect of the like amount is also restricted. Although the graduated national insurance scheme has been abolished (see the text and note 2 *supra*), the statutory provisions under which the service schemes were modified were continued in force for a limited period to enable suitable transitional arrangements to be made: see the National Insurance (Non-participation--Transitional Provisions) Regulations 1974, SI 1974/2057 (continued in force notwithstanding the repeal of the enactment under which they were made). These regulations created a 'settlement period', to end, normally, on 5 April 1980, but capable of extension, if this should be necessary. Provision is made, where a non-participating employment comes to an end by reason of the repeal of the National Insurance Act 1965 Pt III (ss 56-63), for the employer (ie in the present instance, the service authorities) to make a payment in lieu of contributions (within the meaning of s 58 (repealed)) if the insured person is not assured of equivalent pension benefits (in this instance under the army or air force pensions scheme) during the settlement period: see the National Insurance (Non-participation-Transitional Provisions) Regulations 1974, SI 1974/2057, regs 3, 4.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/268. Pensions increases; minimum pensions benefits.

268. Pensions increases; minimum pensions benefits.

The army and air force pensions schemes have been extended so as to secure, to those within their scope, benefits equivalent to those provided by the Pensions (Increase) Act 1971¹.

The army and air force service pensions schemes have been further modified to provide for those within their scope certain guaranteed minimum rates of benefit².

¹ The Pensions (Increase) Act 1971 (amended by the Pensions (Increase) Act 1974) replaced the Pensions (Increase) Acts 1920 to 1969, and applies to the pensions of civil servants and employees in certain other public services (including civilian employees of Territorial, Auxiliary and Volunteer Reserve Associations to whom pensions are payable by a Secretary of State under regulations made under the Reserve Forces Act 1980 s 129(1) (repealed: see now the Reserve Forces Act 1996 s 8; and para 223 ante), but not to the pensions of members of the armed forces: see the Pensions (Increase) Act 1971 s 5(1), Sch 2 para 37. The pensions to which the Pensions (Increase) Act 1971 relates may, subject to certain qualifying conditions, be brought up to the 1969 standard if they began before that year, and there is provision for equivalent increases for pensions beginning between 1 April 1969 and 31 March 1971 (see s 1 (amended by the Pensions (Increase) Act 1974 s 3(3)), and for annual reviews of the cost of living thereafter, permitting of future pensions increases: see the Pensions (Increase) Act 1971 s 2 (repealed, with savings, by the Social Security Pensions Act 1975 s 65(2), Sch 5). As to the Pensions (Increase) Act 1971 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 614 et seq.

² See the Army Pensions Warrant 1977; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 39 App 45.

UPDATE

**263-297 Varieties of pensions; authority for the granting of pensions ...
Procedure on appeal to the High Court**

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/269. Payment of military and air force pensions; declarations required to obtain payment.

269. Payment of military and air force pensions; declarations required to obtain payment.

Pensions payable in respect of military or air force service are not required to be paid in advance¹. In special circumstances, any pension administered by or under the authority of the Secretary of State or the Defence Council² may be issued in advance for a period not exceeding six months and subject to such conditions as may be prescribed by rules³ made by the administering authority⁴. Disablement pensions may be paid provisionally or upon any other basis, and for such period, as the Secretary of State may direct; weekly pensions may be paid weekly in advance, and a pension not awarded as a weekly pension may be paid quarterly or monthly in arrear⁵.

Before a pension can be paid, a declaration must be made and signed by the person entitled to receive payment. Such a declaration is required before payment begins and subsequently at such intervals as may be required by the Secretary of State⁶.

1 Armed Forces Act 1981 s 26. However, a military service pension granted before the commencement of the Armed Forces Act 1981 (ie before 28 July 1981: see s 29(4)) and at that date being paid in advance pursuant to the Army Pensions Act 1914 (repealed) must continue to be so paid: Armed Forces Act 1981 s 26.

2 As to the Secretary of State and the Defence Council see para 2 ante.

3 See the War Pensions (Payment in Advance) Rules 1920, SR & O 1920/747.

4 War Pensions (Administrative Provisions) Act 1919 s 3(1) (amended by the Defence (Transfer of Functions) Act 1964 s 1(3)). This power does not affect any other right of issuing pensions in advance (War Pensions (Administrative Provisions) Act 1919 s 3(2)), and is of general application and not confined to pensions awarded in respect of service during the 1914-18 war (see the War Pensions Act 1920 s 2 proviso). As to the duration of that war see para 263 note 7 ante. However, the power to authorise payment in advance, conferred by the War Pensions (Administrative Provisions) Act 1919 s 3(1), has in fact been applied only to payments being made to a pensioner who is about to emigrate to a British possession outside the United Kingdom, or who is about to be repatriated after service in the armed forces to any British possession out of the United Kingdom, or elsewhere: see the War Pensions (Payment in Advance) Rules 1920, SR & O 1920/747, r 2. As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to British possessions see COMMONWEALTH vol 13 (2009) PARA 703.

5 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 66 (amended by SI 1984/1154; SI 1988/2248). See para 276 post.

6 See the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 42 paras 3122, 3130(4). The purpose of the declaration is to provide evidence that the claimant is in fact the person entitled and is still alive.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/270. Effect of admission as Chelsea Hospital in-pensioner.

270. Effect of admission as Chelsea Hospital in-pensioner.

Every person admitted as an in-pensioner at the Chelsea Hospital surrenders all right, title, claim and interest to any pension or annual allowance for his military services, wounds or disabilities, notwithstanding that he may subsequently cease to be an in-pensioner¹. In the event of any in-pensioner being allowed by the commissioners to resign from the hospital, the commissioners may, at their discretion, restore to him the out-pension to which he was entitled at his admission or some lesser rate of pension².

1 See the Chelsea and Kilmainham Hospitals Act 1826 ss 10, 24. The right of discharged soldiers under these provisions is to receive such pension as has been fixed by orders and regulations at the date of his enlistment, and this is what is surrendered by admission to the hospital: see ss 10, 12, 24. As to forfeiture of pensions for misconduct see para 265 ante. As to the pensioners of Chelsea Hospital see generally para 274 post.

2 See *ibid* ss 10, 24 proviso.

UPDATE

**263-297 Varieties of pensions; authority for the granting of pensions ...
Procedure on appeal to the High Court**

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

270 Effect of admission as Chelsea Hospital in-pensioner

NOTES 1, 2--Chelsea and Kilmainham Hospitals Act 1826 s 10 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/271. Assignment of pensions; commutation.

271. Assignment of pensions; commutation.

A pension payable in respect of service in Her Majesty's forces may not be assigned, nor may any charge be made on it¹. Where an officer of the army or air force is bankrupt, any pension to which he is entitled may, however, be paid to the trustee in bankruptcy by order of the court².

The Treasury has power to commute, by payment of a capital sum calculated according to the life expectancy of the recipient, the service pensions, or portions of pensions, of officers of the army and air force³. Regulations made by the Treasury prescribe the conditions on which commutation may be effected, the procedure for application and commutation rates⁴. Any portion of a war or disablement pension may also be commuted at the discretion of the Secretary of State and on terms prescribed by regulations⁵. Portions of pensions which have been commuted may be taken into account in reckoning increases due under the enactments relating to pensions increases⁶.

¹ Army Act 1955 s 203(1); Air Force Act 1955 s 203(1). The restrictions in the Army Act 1955 s 203(1) and the Air Force Act 1955 s 203(1) are disapplied when pension sharing rights are activated under certain types of order: see further SOCIAL SECURITY AND PENSIONS.

² Army Act 1955 s 203(3); Air Force Act 1955 s 203(3); Insolvency Act 1986 s 51; Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. Except as provided by the Army Act 1955, the Air Force Act 1955, and the Attachment of Earnings Act 1971, no order may be made by a court the effect of which would be to restrain any person from receiving that which he cannot assign: Army Act 1955 s 203(2); Air Force Act 1955 s 203(2); Attachment of Earnings Act 1971 s 22(5). The prohibition has effect in the United Kingdom and in any colony: Army Act 1955 s 203(4); Air Force Act 1955 s 203(4). As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to the meaning of 'colony' see para 20 note 4 ante. Money paid on commutation of a pension loses its character as a pension and may be taken in execution (*Crowe v Price* (1889) 22 QBD 429, CA), and this applies also to pension money when paid into the pensioner's bank account (*Jones & Co v Coventry* [1909] 2 KB 1029). As to commutation see the text and notes 3-6 infra. As to assignment of pay see para 218 ante. The restrictions in the Army Act 1955 s 203(2) and the Air Force Act 1955 s 203(2) are disapplied when pension sharing rights are activated under certain types of order: see further SOCIAL SECURITY AND PENSIONS.

³ See the Pensions Commutation Act 1871 ss 2-4; the Pensions Commutation Act 1882 s 3; the Armed Forces Act 1981 s 20(1), Sch 3 para 3; and the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. Although the Pensions Commutation Acts 1871 to 1984, in so far as they apply to certain other categories of persons, are repealed by the Superannuation Act 1972 s 29(4), Sch 8, their application to officers of the armed forces is not thereby affected. 'Officer' in these provisions includes warrant officers in Her Majesty's land forces and officers in Her Majesty's air force: Pensions Commutation Act 1871 s 2; Armed Forces Act 1981 Sch 3 para 3; Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. As to restrictions on the commutation of pensions arising from the requirements of the state retirement pension legislation see para 267 note 4 ante. This power is now exercisable by the Secretary of State except in so far as the Treasury otherwise directs, and to the extent that in consequence of such a direction the power is not exercisable by the Secretary of State, by such Minister of the Crown or other authority as is specified in the direction: Pensions Commutation Act 1984 s 1. As to the Secretary of State see paras 2, 265 note 6 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

⁴ See the Pensions Commutation Regulations 1968, SI 1968/1163 (amended by SI 1970/515; SI 1974/734; SI 1977/108; SI 1978/1257; SI 1983/1052; SI 1995/2648). An applicant who wilfully makes a false declaration regarding anything required by the regulations is liable to forfeit his pension (Pensions Commutation Act 1871 s 9), and if it is made knowingly and wilfully and is false in a material particular it constitutes a criminal offence (see the Perjury Act 1911 s 5; and the Magistrates' Courts Act 1980 s 17(1), Sch 1 para 14; and cf CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 717). The procedure for payment by the National Debt Commissioners of sums payable for commuted pensions is laid down by the Pensions Commutation Payment Regulations 1958, SI 1958/2195, made under the Revenue Act 1903 s 16. Regulations are now made by the Secretary of State with Treasury consent; existing regulations continue in force: Pensions Commutation Act 1984 s 2. Amounts awarded by way of commutation of pensions may instead, if the person who makes the

award so directs, be paid out of money provided by Parliament by the authority responsible for the payment of the pension: s 1.

5 War Pensions Act 1921 s 7. As to the regulations made see the Commutation (Ministry of Pensions) Regulations 1924, SR & O 1924/802 (amended by SR & O 1938/105; SI 1978/1526). These regulations are expressed not to apply to commissioned officers of the army or the air force (see the Commutation (Ministry of Pensions) Regulations 1924, SR & O 1924/802, reg 2), and it is submitted that applications by such officers for the commutation of war or disablement pensions must be governed by the Pensions Commutation Regulations 1968, SI 1968/1163 (as amended) (see note 4 supra), the terms of which appear to be sufficiently wide to permit of applications for the commutation of such pensions, as well as of service pensions.

6 As to pensions increases see para 268 ante.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

271 Assignment of pensions; commutation

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to the avoidance of assignments of pensions, see s 356.

NOTE 3--Pensions Commutation Act 1871 s 4 amended: Civil Partnership Act 2004 Sch 26 para 3.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(ii) Service Pensions/272. Obtaining pension by fraudulent means.

272. Obtaining pension by fraudulent means.

It is an offence to obtain or attempt to obtain by any fraudulent means the grant or payment of any service pension or any service pension increase¹.

¹ Any such action would amount to obtaining property (or, possibly, a pecuniary advantage) by deception: see the Theft Act 1968 ss 15, 16; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 312-313. These provisions prescribe the penalties for such offences when tried on indictment. It would be an offence under these provisions for a person to impersonate or attempt to impersonate another to obtain payment of money in respect of a pension.

UPDATE

**263-297 Varieties of pensions; authority for the granting of pensions ...
Procedure on appeal to the High Court**

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

272 Obtaining pension by fraudulent means

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/A. IN GENERAL/273. Disablement and death pensions.

(iii) War and Disablement Pensions

A. IN GENERAL

273. Disablement and death pensions.

Pensions in respect of disablement or death during service, other than service during the period of the 1914-18 war¹, or in any earlier war or during any service since 2 September 1939, are awarded as service pensions at the discretion of the service authorities, and are administered and paid by them². Pensions relating to disability or death attributable to or aggravated by service during the period of the 1914-18 war or in any earlier war, or any service since 2 September 1939, are awarded at the discretion of the Secretary of State for Defence and administered by him³. The claimant may appeal from the decision on specified grounds to a pensions appeal tribunal, and in certain circumstances from that tribunal to a judge of the High Court⁴.

Where, after making a claim for an award in respect of a war pension⁵, the claimant⁶ dies before an award has been made then, notwithstanding the claimant's death, the Secretary of State may make an award to the appropriate representative or representatives of the claimant⁷. No such award may be made, however, in respect of any period after the claimant's death⁸. Similarly, where the claimant dies before an award has been made consequent upon an appeal⁹ the Secretary of State may make an award to the appropriate representative or representatives of the claimant¹⁰, but may not make such an award in respect of any period after the claimant's death¹¹.

1 As to the duration of the 1914-18 war for this purpose see para 263 note 7 ante.

2 See the War Pensions Act 1920 ss 1, 2; the Pensions (Navy, Army and Air Force and Mercantile Marine) Act 1939 s 1 (repealed); and the Pensions (Navy, Army, Air Force, Nursing and Auxiliary Services) Transfer of Powers Order 1939, SR & O 1939/1194. As to the authority (derived partly from statute and partly from the royal prerogative) by which the pensions are granted see para 263 notes 6-7 ante. As to the former exemption from income tax of disability pensions, and certain wounds pensions and retired pay granted on account of disablement, see the Income and Corporation Taxes Act 1988 ss 315(1), (2), 318 (ss 315, 318 repealed for the purposes of income tax for the year 2003-2004 and subsequent years of assessment by the Income Tax (Earnings and Pensions) Act 2003 ss 722, 724(1), Sch 6 Pt 1 paras 1, 41, Sch 8 Pt 1); and INCOME TAXATION vol 23(2) (Reissue) paras 1226, 1229. As to the exemption from income tax of annuities and additional pensions granted to holders of the Victoria Cross, the George Cross, the Albert Medal or the Edward Medal see the Income and Corporation Taxes Act 1988 s 317 (repealed for the purposes of income tax for the year 2003-2004 and subsequent years of assessment by the Income Tax (Earnings and Pensions) Act 2003 Sch 6 Pt 1 paras 1, 41, Sch 8 Pt 1); and INCOME TAXATION vol 23(2) (Reissue) para 1227.

3 As to the devolution on the Secretary of State for Defence of the administration and control of these pensions see para 265 note 6 ante. As to the Secretary of State see para 2 ante. Information relating to war pensions which is held by the Secretary of State or by a person providing services to him in connection with the provision of those services may be used and supplied to the Secretary of State or such a person for the purposes of, or for any purposes connected with, the exercise of functions in relation to war pensions: Social Security Act 1998 s 3 (amended by the Employment Act 2002 s 50, Sch 6 para 1, Sch 8 para 1). As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

4 As to appeals to pension appeal tribunals, the constitution of those tribunals, and appeals from them to the High Court, see para 292 et seq post.

5 le, in respect of service between 4 August 1914 and 30 September 1921 or after 2 September 1939, under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see para 263 note 6 ante.

6 'Claimant' means a person who has claimed an award under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883: art 68(1)(a).

7 Ibid art 68(3), (4). The person or persons to receive the award is or are known as the 'designated person', being one or other of the following, to be ascertained by the Secretary of State after due inquiry, by taking the following list in the order stated (art 68(1)(b)):

- 22 (1) the claimant's widow or, as the case may be, widower;
- 23 (2) the claimant's unmarried dependant who lived as a wife;
- 24 (3) the claimant's children;
- 25 (4) the claimant's parents;
- 26 (5) the claimant's other dependants; or
- 27 (6) the claimant's personal representatives.

Where there is no grant of probate or letters of administration or other proof of title in respect of a deceased person's estate, 'personal representatives' means the person or persons appearing to the Secretary of State to be beneficially entitled to the estate of the deceased claimant: art 68(2). The receipt of the designated person is a good discharge to the Secretary of State for any award made in respect of the claim of the deceased claimant: art 68(4).

8 Ibid art 68(5).

9 le an appeal under the Pensions Appeal Tribunals Act 1943: see para 292 et seq post.

10 As to who is the appropriate person to receive the award see note 7 supra. In order to provide appropriate machinery for appeals to be brought or continued after the claimant's death, modifications have been made in the Pensions Appeal Tribunals Act 1943: see the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082; and para 292 note 20 post. This order provides not only for the continuation of appeals to pensions appeal tribunals which have been brought before a claimant's death (see art 5 (amended by SI 2001/408)), but also for the initiation by the designated person of certain such appeals after the claimant's death (Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 3 (amended by SI 2001/408)). Subject to certain conditions, following the claimant's death the designated person may initiate an appeal to the High Court against the tribunal's decision, or may continue such an appeal in place of the claimant: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, arts 4, 5 (amended by SI 2001/408). As to appeals to the High Court see para 297 post. No appeal may be brought by virtue of these provisions unless it is brought within three years of the claimant's death, and none of these provisions applies in relation to any claimant who died before 1 September 1980: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, arts 1(1), 9(1). The Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, also make provision for posthumous appeals: see para 292 et seq post.

11 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 68(3)-(5).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

273 Disablement and death pensions

TEXT AND NOTES--Provision is made for the establishment of pension and compensation schemes for the armed or reserve forces: see the Armed Forces (Pensions and Compensation) Act 2004; and PARA 266A.

NOTE 3--The Secretary of State has a duty to take reasonable steps to inform those who may be entitled to a disablement pension of that fact: *Secretary of State for Defence v Reid* [2004] EWHC 1271 (Admin), (2004) Times, 7 July.

Social Security Act 1998 s 3 further amended: Pensions Act 2004 Sch 10 para 1; Child Maintenance and Other Payments Act 2008 Sch 7 para 3(2).

NOTE 10--SI 1980/1082 arts 3, 5 amended: SI 2005/245, SI 2008/2683. An appeal by the designated person now lies to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 s 11: SI 1980/1082 art 4 (amended by SI 2008/2683). Where a designated person has brought or continued an appeal in the Upper Tribunal, the designated person may appeal from the Upper Tribunal in accordance with the Tribunals, Courts and Enforcement Act 2007 s 13: SI 1980/1082 art 5A (added by SI 2005/245, amended by SI 2008/2683). SI 1980/1120 revoked: SI 2008/2683.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/A. IN GENERAL/274. Pensioners of Chelsea Hospital.

274. Pensioners of Chelsea Hospital.

The Commissioners of Chelsea Hospital are responsible for the grant and administration¹ of pensions payable at Chelsea to disabled, invalid and discharged soldiers², military service pensions in general wherever the pertinent period of service occurred, and disablement pensions resulting from service as a soldier³ during any period of peace prior to 4 August 1914 or any service between the end of the 1914-18 war and 2 September 1939⁴.

1 The functions of grant and administration of pensions have not included their actual payment since 1846, when that function was transferred to the Secretary at War, later the Secretary of State for War. It has now been transferred to the Secretary of State for Defence: see the Defence (Transfer of Functions) Act 1964 s 1(2). As to the Secretary of State see para 2 ante.

2 Pensions payable to inmates of the hospital (commonly called 'in-pensioners').

3 Non-commissioned officers are included: see the Chelsea and Kilmainham Hospitals Act 1826 s 3; Army Pensions Act 1830 s 2 (repealed).

4 Chelsea and Kilmainham Hospitals Act 1826 ss 3, 10; Army (Artillery, etc) Pensioners Act 1833 s 1. Under those enactments, the Commissioners of Chelsea Hospital were responsible for the grant and administration of all army pensions. Their functions as to disability pensions and grants (other than in-pensions) were transferred to the Minister of Pensions by the Ministry of Pensions Act 1916 s 2 (repealed), and were subsequently transferred back to the commissioners (except in so far as such pensions arising out of the 1914-18 war (as to which see para 263 note 7 ante) and earlier wars were concerned) by the War Pensions Act 1920 ss 1, 2. The commissioners' functions as to pensions and grants (other than in-pensions) on account of disablement or death arising out of (inter alia) service in the armed forces after 2 September 1939 were again transferred to the Minister of Pensions by the Pensions (Navy, Army and Air Force, Nursing and Auxiliary Services) Transfer of Pensions Order 1939, SR & O 1939/1194, art 2 (made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 s 1 (repealed)). These powers have now devolved on the Secretary of State for Defence: see para 265 note 6 ante; and see also para 2 ante. Thus the functions remaining in the hands of the Commissioners of Chelsea Hospital are now limited to the grant, administration and payment of pensions to in-pensioners at Chelsea Hospital, and the grant and administration of the service and disability pensions stated in the text.

From 1826 until 1922 the commissioners were also responsible for the same functions in relation to out-pensions formerly granted by the commissioners or governors of the Kilmainham Hospital: see the Chelsea and Kilmainham Hospitals Act 1826 ss 4, 10 (as originally enacted). However, in 1922 the Kilmainham Hospital, which is situated within the territory of the Irish Republic, ceased to be the responsibility of the British authorities and the Commissioners of Chelsea Hospital lost their powers with respect to that hospital and its pensioners as such. The provisions of the Chelsea and Kilmainham Hospitals Act 1826, so far as they relate to the Kilmainham Hospital, have been repealed.

As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

274 Pensioners of Chelsea Hospital

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/275. Applications in respect of service after 2 September 1939.

B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939

275. Applications in respect of service after 2 September 1939.

No formal claim is needed, and there are no rules as to the manner of the making of an application, for a pension in respect of service in the armed forces¹ after 2 September 1939². Where a member is invalided from the armed forces, his service medical documents are sent by the service authorities to the appropriate department, where the question of entitlement is considered without any application³. After verification of such particulars as age, marriage and birth of children, the matter is referred to a medical officer or a board of medical officers appointed or recognised by the Secretary of State⁴, or to a panel of independent medical experts⁵ for determination whether the relevant disablement or death can be certified as being of such a nature⁶ that it can be accepted as due to service⁷, and the degree of any disablement which is so accepted must then be determined by a medical officer or board, or a panel of independent medical experts⁸.

1 Similarly, there are no rules with regard to persons claiming under schemes which apply the provisions relating to services pensions to other categories of applicants.

2 The provisions discussed in this paragraph, and in para 276 et seq post, also apply, in general, to awards due to service during the 1914-18 war (as to which see para 263 note 7 ante). However, the discussion of disability and death pensions and other grants in this title relates only to such benefits in respect of service in the armed forces after 2 September 1939, except where otherwise stated. As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

3 Where the member has not been invalided, and the department receives a written or oral inquiry from him, he may be invited to complete a form. As to the administration of social security generally see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 330 et seq.

4 As to the Secretary of State see para 2 ante.

5 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(4)(b) (substituted by SI 1996/1638).

6 I.e. as due to an injury (defined in para 277 note 5 post) which is attributable to service or, having existed before or arisen during service, has been and remains aggravated by it, or, in the case of death, was due to or hastened by such an injury: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 4(1)(a), (b), 5(1)(a), (b) (amended by SI 1996/1638). See also para 277 post.

7 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 4(1), 5(1).

8 Ibid arts 1(4)(b), 9(2) (art 1(4)(b) as substituted: see note 5 supra).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/276. Payment of disablement pensions.

276. Payment of disablement pensions.

An award in respect of the disablement of a member of the armed forces must not be made to take effect before the termination of his service or, in the case of an officer, while he is an officer on the active list¹, and, except where the Secretary of State otherwise directs, it may not be made in respect of any period preceding that which is prescribed². Pension awarded in terms of a weekly amount may be paid weekly in advance and pension not awarded in such terms may be paid quarterly or monthly in arrears³.

Except where the Secretary of State otherwise directs, payment of pensions under the scheme relating to civilian injuries⁴ may be made weekly in advance⁵, but, except as otherwise so directed, no payment under that scheme may be made in respect of any period before the date of the application or appeal as a result of which the award is made⁶. Where a person fails to draw a pension awarded to him under any of the pensions instruments for a continuous period of 12 months, the award may be cancelled and payment of any of the arrears may be withheld⁷, but the Secretary of State may restore the award and pay the arrears in whole or in part⁸.

1 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 8(2). For the meaning of 'officer on the active list' see Sch 4 item 37.

2 Ibid art 65, Sch 3 (both substituted by SI 1997/286). In the case of a claim which results in a pension being awarded, the prescribed earliest date for the commencement of payment of an award or an adjustment of an award is the latest of: (1) the day following the date of the termination of the member's service; (2) the date of the claim; or (3) the date of the last application for review: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 3 para 1(1), (2) (as so substituted; and Sch 3 para 1(2) amended by SI 2001/409). Where the claim or application for review is made within three months of the date of termination of service or (except where the foregoing applies) the date of notification of a decision on the claim or review, then that date is the date of commencement: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 3 para 1(3), (4) (as so substituted; and Sch 3 para 1(4) amended by SI 2001/409). Similar provisions apply in respect of a claim relating to death: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 3 para 1 (as so substituted and amended). Other days are prescribed for the commencement of payment where a pension is adjusted as a result of a review instigated by the Secretary of State, or reviewed as a result of a decision which arose from an official error: see Sch 3 para 1(6), (6A) (as so substituted; and Sch 3 para 1(6) amended, and Sch 3 para 1(6A) added, by SI 2001/409). Provision is also made for cases where the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 42(1A) (as added) (see para 288 post) or the Pensions Act 1995 s 168 relating to widows' pensions applies (see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 623); where there is a successful appeal to the High Court; where an award or adjustment is made pursuant to a decision of the President of the Pensions Appeal Tribunals that the decision of a Pensions Appeal Tribunal be set aside; and for various cases where a decision is reviewed or adjusted: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 3 paras 2-11 (as so substituted; and amended by SI 2001/409). As to appeals see para 292 et seq post. As to the Secretary of State see para 2 ante. As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

3 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 66(1B) (art 66(1A)-(1D) added by SI 1988/2248). The provisions as to payment are subject to the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 65A (as added) (payment of pensions by direct credit transfer): art 66(1) (substituted by SI 1988/2248). The Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 66(2) (added by SI 1984/1154) identifies the day of the week from which changes in the rate of weekly pension made by any amending order are to have effect. Pension is to be paid by such means as appears to the Secretary of State to be appropriate in the circumstances of the case or class of case: Naval, Military and Air Forces etc (Disablement

and Death) Service Pensions Order 1983, SI 1983/883, art 66(1D) (as so added). The Secretary of State may in any particular case or class of case determine that pension be paid in advance or in arrears or partly in advance and partly in arrears, and for a period different from that specified in art 65(1B) (as added): art 66(1C) (so as added). He may direct that payments be made provisionally or upon any other basis: art 66(1A) (as so added). As to rates of pensions and allowances see art 2, Schs 1, 2 (amended by SI 1983/1116; SI 1996/1638; SI 2003/434).

4 Ie the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended), which covers injuries sustained during war (whether in war service or not) by various categories of civilians: see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 599 et seq.

5 Ibid art 75(1) (substituted by SI 1988/2260). Provision is made for payment of pensions by direct credit transfer: see the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 74A (added by SI 1988/2260).

6 See the Personal Injuries (Civilians) Scheme 1983, SI 1983/686, art 74, Sch 5.

7 Ibid art 73; Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 64(1).

8 Ibid art 64(2).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

276 Payment of disablement pensions

NOTE 2--See *Secretary of State for Defence v Reid* [2004] EWHC 1271 (Admin), (2004) Times, 7 July (pension back dated pursuant to SI 1983/883 Sch 3 para 10 (revoked) owing to failure of Secretary of State to take reasonable steps to inform claimant of entitlement).

NOTE 5--SI 1983/868 art 74A amended: SI 2005/3031.

NOTE 6--SI 1983/686 Sch 5 substituted by SI 2006/765, amended by SI 2008/2683.

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277. Basic condition of awards, and conditions of entitlement.

The basic condition for an award¹ of a pension or other grant in respect of the disablement or death of a member of the naval, military and air forces of the Crown is that the disability or death which gives rise to a claim for an award must be due to service².

So far as such service after 2 September 1939 is concerned, where, not later than seven years after the termination³ of a member's service, a claim is made in respect of his disablement, or his death occurs and a claim is made (at any time) in respect of that death, that disablement or death must be accepted as due to service if it is certified⁴: (1) that the disablement is due to any injury⁵ which is attributable to service⁶, or which existed before or arose during service and has been and remains aggravated by it⁷; or (2) that the death was due to or hastened⁸ by an injury attributable to service, or the aggravation by service of an injury, which existed before or arose during service⁹. Where, after the expiration of seven years from the termination of a member's service, a claim is made in respect of his disablement or death (occurring after the end of those seven years) such disablement or death must be accepted as due to service if it is certified: (a) that the disablement is due to an injury which is attributable to service before the commencement of the 1914-18 war or after 30 September 1921 or which existed before or arose during such service and has been and remains aggravated by it; or (b) that the death was due to, or substantially hastened by, an injury attributable to service, or which existed before or arose during service and was aggravated by it¹⁰.

Every condition or requirement relating to an award or its amount must be construed as a continuing one, and every award may therefore cease or be varied as and when any condition or requirement ceases to be fulfilled or is varied¹¹.

¹ 'Award' means retired pay, pension, grant, allowance, supplement or gratuity payable under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883: see art 2.

² Ibid art 3 (substituted by SI 1996/2882). This is expressed to be subject to the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 3A, 3B (as added). 'Service' means service as a member of the armed forces: art 1(2), Sch 4 item 48 (amended by SI 1996/1638). It is a condition of an award being made that a claim be made in an approved form and that the claim state the awards and allowances being claimed: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3A(1) (art 3A added by SI 1996/2882; and amended by SI 1997/286). The pensions, allowances and awards to which this requirement applies are listed in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3A(2) (as so added and amended). As to where a claim is not required see art 3B (added by SI 1996/1638); as to the withdrawal of claims see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3C (added by SI 1996/1638); and as to the date of the claim see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 3D (added by SI 1996/1638). See also para 263 note 7 ante. 'Service' does not include non-active service in the reserve: *Minister of Pensions v Bird* (1944) 1 WPAR 21.

As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

³ 'Termination' means termination by retirement, discharge, demobilisation, transfer to the emergency list or reserve or in any other manner; and where the member has rendered service during more than one period, 'termination' refers to the ending of the period which is relevant to the case in point: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 4 item 50.

⁴ 'Certified' means: (1) determined in accordance with a decision of a pensions appeal tribunal or of the nominated High Court judge on an appeal from a decision of such a tribunal; (2) in the absence of such a

decision and where a medical question is involved, in accordance with a certificate of a medical officer, or of a board of medical officers, appointed or recognised by the Secretary of State, or with the opinion of a board of independent medical experts; (3), in a case where a pension or retired pay was payable in respect of disablement or death due to service before the commencement of the 1914-18 war or after 30 September 1921 but before 3 September 1939, if a certificate on that question has been given before 29 July 1996 by a medical officer or a board of medical officers appointed by the Secretary of State for Defence, in accordance with that certificate; or (4), where it appears to the Secretary of State that the medical question raises a serious doubt or difficulty and he so desires, in accordance with the opinion thereon obtained from one or more of a panel of independent medical experts nominated by the President of the Royal College of Physicians of London, the Royal College of Surgeons of England or the Royal College of Obstetricians and Gynaecologists: *ibid* art 1(4) (amended by SI 1996/1638). As to the Secretary of State see para 2 ante.

5 'Injury' includes wound or disease, but excludes any injury due to:

28 (1) the use or effects of tobacco; or

29 (2) the consumption of alcohol,

except that head (1) *supra*, in so far as it relates to the use of tobacco, and head (2) *supra* do not apply where the person suffers from a mental condition which is attributable to service if: (a) the degree of disablement in respect of that condition has been assessed at 50% or more; and (b) he started or continued to use tobacco or to consume or continue to consume alcohol due to that condition: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 4 item 27 (substituted by SI 1994/772).

6 As to the meaning of 'attributable to service' see para 278 post.

7 As to the meaning of 'aggravation by service' see para 279 post.

8 It is not possible to define an exact time, but it has been held that the life must have been perceptibly shortened: *Cook v Minister of Pensions* (1949) 4 WPAR 625. Delay in diagnosis resulting in delay in the commencement of treatment which might probably or reasonably have prolonged life may be held to have hastened death, and consequently lead to a finding that the death was hastened by an injury attributable to service: *Hall v Minister of Pensions* (1948) 3 WPAR 1321. See also *Agnew and Hubbard v Minister of Pensions* (1950) 4 WPAR 909. Where, however, the delay is due to the man's own fault, death is not hastened by an injury attributable to service: *Hubbard v Minister of Pensions* (1948) 3 WPAR 1677 (disinclination to undergo a recommended operation).

9 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(1). 'Service' for these purposes means service before the commencement of the 1914-18 war or after 30 September 1921: art 4(6) (amended by SI 1996/1638).

10 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 5(1) (amended by SI 1996/1638).

11 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(8). For an instance of the application of this provision see *Shipp v Minister of Pensions, Minister of Pensions v Pretty* [1946] KB 386, [1946] 1 All ER 417, 1 WPAR 91, discussed in para 279 note 12 post.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/279. Aggravation by service.

279. Aggravation by service.

The issue of aggravation only arises if the issue of attributability has been decided against the claimant¹. No question of aggravation arises unless the condition existed before service or unless it arose during service without service being a cause of its onset². This may happen, however, even where the disease was not recognised before the man joined the forces³. It is for the Secretary of State for Defence to establish that the condition arose before service, which may be difficult in diseases which are insidious in onset or exist before symptoms appear or lie dormant, but the actual disease must be shown to have existed as distinct from a mere susceptibility or predisposition⁴. Some diseases are incapable of being affected by any outside influences⁵, and in these the only way in which aggravation can possibly arise is by delay in diagnosis and treatment⁶. A finding of aggravation by service of a pre-service condition is possible even where the aggravation only becomes apparent after discharge from service⁷.

Where there is a finding of aggravation, a pension is payable in the same way as if the finding had been that the injury was attributable to service, the only difference being that if it is found later that the man is no worse than he would have been apart from service, then the pension may be terminated; this follows from the condition that the injury to which the disablement is due must remain aggravated by service⁸. It may be shown that the aggravation has ceased either because the man's condition is no worse than it was before his service began, or because the disease from which he suffers is progressive and the worsening of his condition would have progressed to the extent which has in fact occurred, even apart from service⁹. The evidence, however, must be cogent and convincing before there can be a finding that aggravation has ceased¹⁰, and a pension should not be terminated on this ground unless it is quite clear that all aggravation has passed away, as once the pension has been terminated it can never be revived¹¹. Where there is sufficient evidence, a tribunal may, in appropriate cases, determine the period during which a disease remained aggravated¹².

1 *Whitehurst v Minister of Pensions* (1947) 1 WPAR 795 at 800 per Denning J, following *Jewett v Minister of Pensions* (1946) 1 WPAR 237, and *Perry v Minister of Pensions* (1947) 1 WPAR 485. As to the determination of questions of attributability see para 278 ante.

2 *Perry v Minister of Pensions* (1947) 1 WPAR 485, where there was nothing to show that the man had ear trouble before the war, or that some cause disassociated from war service caused its onset during service, so the proper finding was attributability, not aggravation.

3 *Williams v Minister of Pensions* (1947) 1 WPAR 503.

4 *Marshall v Minister of Pensions* [1948] 1 KB 106 at 108, [1947] 2 All ER 706 at 707, 1 WPAR 785 at 792 per Denning J; *O'Neill v Minister of Pensions* (1947) 1 WPAR 839. As to the Secretary of State see paras 2, 265 note 6 ante.

5 Eg defective eyesight due to astigmatism (*Ord v Minister of Pensions* (1948) 4 WPAR 1) or carcinoma of the lung (*Bush v Minister of Pensions* (1949) 4 WPAR 377). The decisions in these types of cases depend entirely on medical evidence, which is liable to change in the light of advancing medical knowledge.

6 *Agnew and Hubbard v Minister of Pensions* (1950) 4 WPAR 909.

7 *Sullivan v Secretary of State for Social Services* (1971) 5 WPAR 790.

8 *Marshall v Minister of Pensions* [1948] 1 KB 106, [1947] 2 All ER 706, 1 WPAR 785 per Denning J. See also the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 4(1)(a)(ii), 5(1)(a)(ii); and see arts 1(8), 5(3); and para 277 text and note 11 ante. 'Service' for these purposes

means service before the commencement of the 1914-18 war or after 30 September 1921: art 5(3) (amended by SI 1996/1638). As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

9 *Whitt v Minister of Pensions* (1947) 1 WPAR 343 at 346 per Denning J. See also *Backhouse v Minister of Pensions* (1948) 4 WPAR 201.

10 *Pearse v Minister of Pensions* (1949) 4 WPAR 613 at 624 per Ormerod J. There need not necessarily be a medical board: *Knight v Minister of Pensions* (1948) 1 WPAR 1143 at 1151 per Denning J, following *Shipp v Minister of Pensions*, *Minister of Pensions v Pretty* [1946] KB 386, [1946] 1 All ER 417, 1 WPAR 91.

11 *Sanders v Minister of Pensions* (1948) 4 WPAR 31 at 42 per Denning J. The pension may be restored, however, where there is merely a nil assessment for the time being.

12 *Shipp v Minister of Pensions*, *Minister of Pensions v Pretty* [1946] KB 386, [1946] 1 All ER 417, 1 WPAR 91. These cases were decided on the true construction of the Pensions Appeal Tribunals Act 1943 s 1(1), and of provisions corresponding to the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 1(9), 4(1)(a)(ii) (see para 277 ante). See also note 10 supra; and *Rhodes v Minister of Pensions* (1948) 3 WPAR 1393. The powers of the Secretary of State and of the appellate tribunals are limited by the manner in which the claim is framed: if the claimant alleges aggravation on a particular date (eg that of his discharge) the Secretary of State and the tribunals cannot go beyond that and make a finding that the aggravation ceased at some later date (*Shipp v Minister of Pensions* supra; *Campbell v Minister of Pensions* 1947 SC 584, 2 WPAR 555); but if the claimant alleges that aggravation has continued over a period up to the date of his claim, the Secretary of State and the tribunals have jurisdiction (if the evidence suffices) to determine the date, prior to that of the claim, at which it ceased; and an appellate tribunal may determine that that date was later than the one determined by the Secretary of State (*Minister of Pensions v Pretty* supra).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/280. Burden of proof.

280. Burden of proof.

In claims by or in respect of members of the regular forces, the burden of proof varies according to whether the claim in respect of a disablement is made, or the death in respect of which a pension is claimed occurred, before or after the expiration of seven years from the termination of service¹. Where seven years have not so elapsed, the claimant must show some disablement², but once this is done in no case is there any burden on him to prove fulfilment of the conditions³ for acceptance of the disablement or death as being due to service, and he must be given the benefit of any reasonable doubt⁴. Furthermore, where an injury which has led to a member's discharge or death during service was not noted in a medical report at the commencement of his service⁵, it must be accepted that it was due to service, unless the evidence shows that the conditions are not fulfilled⁶. Where, however, the claim is made or death occurs more than seven years after the termination of service, or where the person by or in respect of whom the claim is made was a member of the auxiliary or reserve forces, the claimant is not relieved of the ordinary burden lying on a claimant⁷ to prove fulfilment of the conditions⁸, but he must still be given the benefit of any reasonable doubt based upon reliable evidence⁹.

The effect of these propositions, where a claim in respect of service in the regular forces is made within seven years, is that the claimant must make his claim, but it is the duty of the appropriate service department to submit to the Secretary of State all the evidence available, whether for or against the claim, including the claimant's medical history¹⁰. The claimant may adduce any evidence that he wishes and the Secretary of State may submit any medical question to a medical officer¹¹. Then, upon all the evidence, the Secretary of State must decide¹² whether or not the disease is attributable to service, or the other relevant conditions are fulfilled. His function in this respect is quasi-judicial, but he must not decide against the claimant on a mere balance of probabilities. There must be a real preponderance of probability against the claimant, sufficient to exclude reasonable doubt. This rule as to the weight of evidence applies in all such cases¹³, but in one special category, where an injury or disease which had led to a member's discharge or death was not noted at the commencement of his service, there is a compelling presumption in his favour to which effect must be given unless the contrary is shown¹⁴. Whether the case is one in which the compelling presumption in favour of the claimant operates or not, he succeeds unless, on the whole of the evidence, his claim is rebutted beyond reasonable doubt. In both types of case, the standard of proof required to rebut the claim is the same, and it is identical with that which is necessary to support a conviction in a criminal trial. The distinction between the cases in which the compelling presumption does not operate and those in which it does is that, in the former, the evidence against the claimant must overthrow any evidence in his favour, whereas, in the latter, it must also overthrow the presumption in his favour¹⁵.

Where, however, the claim is made in respect of service in the auxiliary or reserve forces while not called out on permanent service or after the expiration of seven years¹⁶ the claimant must establish his claim¹⁷. For this purpose, he must show that the qualifying conditions applicable to his claim are fulfilled¹⁸. This does not require him to prove his claim beyond reasonable doubt (that is, the standard of proof applicable to the prosecution in a criminal case) but by the production of reliable evidence. If, after considering this evidence and comparing it with contradictory evidence called on behalf of the Secretary of State, a pensions appeal tribunal has a reasonable doubt, then the benefit of that doubt must be given to the claimant¹⁹.

The question whether there is reasonable doubt is not always one of law on which an appeal lies from the pensions appeal tribunal to a judge of the High Court²⁰. The only question for the court, where the issue is as to the existence of reasonable doubt, is whether there was material on which the tribunal was entitled to decide as it did, and its decision may be reversed if it was perverse²¹.

1 For the meaning of 'termination' see para 277 note 3 ante.

2 *Royston v Minister of Pensions* [1948] 1 All ER 778, 1 WPAR 1593.

3 Ie the conditions set out in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(1): see para 277 ante.

4 Ibid art 4(2). This does not, however, apply in the case of a member of the auxiliary or reserve forces not called out on permanent service (see para 232 et seq ante) where the disablement or death which is the subject of the claim is due to (or, in the case of death, hastened by) a disease other than one caused or aggravated by an accident: art 4(4). See also the text and notes 16-19 infra. For the meaning of 'member of the reserve or auxiliary forces' see Sch 4 item 34 (amended by SI 1996/1638).

5 If the services accept a man without a medical report, either because he has been previously examined or for some other reason, he still gets the benefit of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(3): *Edwards v Minister of Pensions* [1947] KB 564, [1947] 1 All ER 379, 1 WPAR 331; *O'Dowd v Minister of Pensions* (1947) 1 WPAR 355.

6 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(3). These provisions do not, however, apply in the case of a member of the auxiliary or reserve forces not called out: see note 4 supra. Where there is no note in contemporary official records of a material fact on which a claim is based, other reliable corroborative evidence of the fact may be accepted: arts 4(5), 5(5).

7 See CIVIL PROCEDURE vol 11 (2009) PARA 770.

8 Ie the conditions set out in the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 4(1), 5(1): see para 277 ante.

9 Ibid arts 4(4), 5(2), (4). See *Minister of Social Security v Connolly* 1967 SLT 121, where the claimant suffered schizophrenia, claimed to be due to strains of war service, which developed 15 years after discharge, but no contemporary medical records or other medical evidence supported the claim, and it was held that it was for the tribunal to decide whether it regarded the claimant's evidence as reliable and whether that evidence raised a reasonable doubt as to whether the conditions requisite to establish attributability were fulfilled; if it was satisfied, the appellate court would not interfere. See also *Dickinson v Minister of Pensions* [1953] 1 QB 228, [1952] 2 All ER 1031, 5 WPAR 211; *Minister of Pensions and National Insurance v Greer* (1958) 2 WPAR 957; *Cadney v Minister of Pensions and National Insurance* [1965] 3 All ER 809, [1966] 1 WLR 80, 5 WPAR 687. As to the use of corroborative evidence see note 6 supra.

10 *Starr v Minister of Pensions* [1946] KB 345 at 350, [1946] 1 All ER 400 at 401, 1 WPAR 109 at 121 per Denning J; *Greatwood v Minister of Pensions* (1946) 1 WPAR 165. Cf the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 5(1)(a). As to the Secretary of State see para 2 ante.

11 On a medical question of serious doubt or difficulty, the Secretary of State may obtain the opinion of one or more of a panel of independent medical experts and the matter involving that question must then be determined in accordance with that opinion: Naval, Military and Air Force etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(4)(b)(iii) (substituted by SI 1996/1638).

12 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(4) (amended by SI 1996/1638). While considering his decision, the Secretary of State is the sole interpreter of the service pensions instrument: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 70.

13 Ie those governed by ibid art 4(2).

14 Ibid art 4(3). This presumption takes the place of evidence. The effect of it is that the claimant succeeds unless each one of the prescribed conditions is negatived. The amount of evidence required is again a real preponderance of probability such as to exclude all reasonable doubt. In certain circumstances these provisions do not apply to members of the reserve or auxiliary forces: see note 4 supra.

15 See *Starr v Minister of Pensions* [1946] KB 345 at 350, [1946] 1 All ER 400 at 401, 1 WPAR 109 at 121 per Denning J, as explained in *Judd v Minister of Pensions and National Insurance* [1966] 2 QB 580 at 587, [1965] 3 All ER 642 at 645, 5 WPAR 679 at 681 per Edmund Davies J, where all the authorities are reviewed, and the statement of Denning J in *Miller v Minister of Pensions* [1947] 2 All ER 372 at 374, 1 WPAR 615 at 624-625 (ie that certain classes of claim are to be decided against the claimant on a balance of probabilities, as in a civil case) is shown to be against the trend of authority and is not followed. Where the aetiology of a disease in respect of which a claim arises is unknown, the burden upon the Secretary of State of establishing beyond reasonable doubt that the disease is not due to service is not discharged by evidence that it has never been shown that any factors common to service life play any part in its origin or aggravation, or merely that nothing is known about its cause; but if there is evidence that, although the aetiology of the disease is unknown, it is one which arises and progresses independently of service factors, and a tribunal is convinced thereby and refuses a pension, the appellate court will not interfere: *Coe v Minister of Pensions and National Insurance* [1967] 1 QB 238 at 241, [1966] 3 All ER 172 at 174, 5 WPAR 725 at 761-762 per Edmund Davies J, reviewing the earlier authorities, and following *Donovan v Minister of Pensions* (1946) 1 WPAR 609 and *Docherty v Minister of Pensions* (1948) 2 WPAR 655.

16 In cases within the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(4) or art 5.

17 Ibid arts 4(4)(a), 5(2). The requirement for the claimant to establish his claim is axiomatic, and does not need express statutory authority to be given: see *Dickinson v Minister of Pensions* [1953] 1 QB 228 at 232, [1952] 2 All ER 1031 at 1033, 5 WPAR 211 at 242 per Ormerod J. Cf the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 4(2), where the words used are 'in no case shall there be an onus on any claimant ... to prove', because the intention there is to reverse the normal presumption that he who alleges must prove, and this does require express statutory provision.

18 Ibid arts 4(4)(a), 5(2).

19 Ibid arts 4(4)(b), 5(4). It is for the tribunal to decide whether it finds the claimant's evidence, considered in the context of the whole of the evidence in the case, to be reliable; it need not consist of, or even include evidence from medical experts: see *Minister of Social Security v Connolly* 1967 SLT 121; and the other cases cited in note 9 supra. See also *Irving v Minister of Pensions* 1945 SC 21, 2 WPAR 401. As to the use of corroborative evidence see note 6 supra. As to appeals see generally para 292 et seq post.

20 As to appeals to a judge of the High Court see para 292 post.

21 *Irving v Minister of Pensions* 1945 SC 21 at 30, 2 WPAR 401 at 413.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

280 Burden of proof

NOTE 10--SI 1980/1120 revoked: SI 2008/2683.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/281. Evidence in pension claims.

281. Evidence in pension claims.

Although a pensions appeal tribunal is not bound by the ordinary rules of evidence¹, it must base its decision on evidence and not on such matters as the opinion of the medical member, because the appellant must have the opportunity of dealing with the evidence². The medical member's function is to advise the other members on the effect of the medical evidence³. It is the tribunal's duty to weigh the evidence; this is not a matter within the jurisdiction of the nominated judge⁴. A tribunal is not bound by a statement of the cause of death on a death certificate⁵ or by the verdict of a coroner's jury⁶. It may take account of the evidence given at a board of inquiry⁷ but should not rely on the absence of relevant information in official records⁸. Where the claimant, on receipt of what purports to be an acceptance of the fact that his disablement is attributable to service, acts to his detriment by forbearing to get any medical opinion⁹ or to appeal¹⁰, the Secretary of State¹¹ is estopped from denying that the disablement is so attributable. Although there is no duty on the claimant to give evidence, where he refuses to do so on a matter peculiarly within his own knowledge a tribunal may draw adverse inferences from his conduct¹².

1 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 12(5). As to pensions appeals see generally para 292 et seq post.

2 *Birt v Minister of Pensions* (1946) 1 WPAR 151; *Moxon v Minister of Pensions* [1945] KB 490 at 501, [1945] 2 All ER 124 at 130, 1 WPAR 63 at 91 per Tucker J. As to the constitution of pensions appeal tribunals see para 296 post.

3 *Parkinson v Minister of Pensions* (1947) 1 WPAR 397. Cf *Bremner v Minister of Pensions* (1946) 2 WPAR 479, where the medical member exceeded his proper function.

4 *Viner v Minister of Pensions* (1947) 1 WPAR 997; *Walters v Minister of Pensions* (1948) 3 WPAR 1761. As to the nominated judge see paras 292, 297 post.

5 *Clark v Minister of Pensions* (1951) 5 WPAR 29 at 45 per Ormerod J.

6 *Wilkinson v Minister of Pensions* (1952) 5 WPAR 113.

7 *XY v Minister of Pensions* [1947] 1 All ER 38, 1 WPAR 279; *Minister of Pensions v Kenny* (1947) 1 WPAR 721, where the case was remitted to the tribunal, which had disregarded the evidence before the court of inquiry and its findings.

8 *Montague v Minister of Pensions* (1948) 3 WPAR 2093.

9 *Robertson v Minister of Pensions* [1949] 1 KB 227, [1948] 2 All ER 767, 3 WPAR 2223.

10 See *Payne v Minister of Pensions* (1955) 5 WPAR 483, where it was held that the minister was not entitled to review his own previous decision on the ground that it had been made in error (as provided by the Royal Warrant then in force) because the claimant had acted on that decision to his detriment by refraining from appealing to a tribunal. See now the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 67(1), (2) (amended by SI 1985/1201; SI 1997/772; SI 2001/409).

11 As to the Secretary of State see para 2 ante.

12 *Childs v Minister of Pensions* (1947) 1 WPAR 679; *Hunt v Minister of Pensions* (1948) 1 WPAR 1093, where the case was remitted for consideration by a fresh tribunal, because it appeared that at the original tribunal hearing the claimant or his adviser may not have understood the position.

UPDATE

**263-297 Varieties of pensions; authority for the granting of pensions ...
Procedure on appeal to the High Court**

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

281 Evidence in pension claims

NOTE 1--SI 1980/1120 revoked: SI 2008/2683.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/282. Rates of retired pay, pensions and gratuities.

282. Rates of retired pay, pensions and gratuities.

Awards of periodical payments in respect of disablement to officers are known as 'retired pay', and those to other ranks are known as 'pensions'¹. Single payments in respect of specified minor injuries or disablement assessed at less than 20 per cent are known as 'gratuities'². All awards in respect of death are known as 'pensions'³. In addition to these benefits, members of the armed forces who are in receipt of retired pay or pensions in respect of disability, and their widows or other dependants, may be eligible for a variety of additional periodical payments, which are known as 'allowances'⁴.

The rate of any retired pay or of any pension in respect of the death of an officer is expressed as an annual sum⁵, and that of a pension to, or in respect of the death of, any other rank, as a weekly sum⁶. All these rates, which are periodically increased, vary not only according to the degree of disablement but also according to the rank of the member of the armed forces concerned, and the various annual, weekly or single sums payable are set out in tables appended to the pensions instruments⁷.

¹ See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 2, Sch 1 Pt II (amended by SI 1996/1638; SI 2003/434).

² See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 2, 11, Sch 1 Pt III (amended by SI 2003/434).

³ See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 2, Sch 2 Pts II, III (amended by SI 2003/434).

⁴ See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 14-37 (amended by SI 1983/1116; SI 1983/1521; SI 1984/1154; SI 1984/1687; SI 1985/1201; SI 1986/592; SI 1987/286; SI 1989/156; SI 1992/710; SI 1993/598; SI 1993/698; SI 1996/2882; SI 1997/286; SI 1999/294; SI 2001/409; SI 2002/792). See also para 285 post.

⁵ See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 1 Pt II, Table, Sch 2 Pt II, Tables 1, 3, 4 (all substituted by SI 2003/434).

⁶ See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 1 Pt II, Table (as substituted: see note 5 supra), Sch 2 Pt II, Tables 2, 5 (amended by SI 1999/294).

⁷ See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Schs 1, 2 (as amended: see notes 1-6 supra).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/284. Basis of determining rates of pensions and amounts of gratuities.

284. Basis of determining rates of pensions and amounts of gratuities.

Where the degree of disablement amounts to 20 per cent or more, the percentage must be expressed in multiples of ten¹, and retired pay or a pension² is payable at the appropriate rate³. Where the degree of disablement is less than 20 per cent and the claimant has suffered one of a number of specified minor injuries, a gratuity is payable⁴ and gratuities are also payable for any other disablement of less than 20 per cent⁵. Where a member of the armed forces has sustained a specified minor injury as well as some other disablement due to service, but a composite assessment shows that the minor injury adds nothing to the degree of disablement resulting from the other injury, an award in respect of each of the two injuries may be authorised⁶.

1 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 9(3). See also para 283 text and note 4 ante. As to the exclusion of certain noise-induced sensorineural hearing loss see arts 8(2A), (2B), 9(2A), (2B) (as added); and para 283 note 4 ante.

2 As to the meaning of 'retired pay or pension' see para 282 ante.

3 For tables of rates of retired pay, pensions, gratuities and allowances see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 1 Pt II (substituted by SI 2003/434). The rates vary according to the rank of the claimant: for the grouping of members of the armed forces according to rank or status see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 1 Pt I.

4 See *ibid* art 11(1), Sch 1 Pt III, Table 1 (art 11(1) amended by SI 1996/1638; and the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 1 Pt II, Table 1 substituted by SI 2003/434).

5 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, Sch 1 Pt III, Table 2 (substituted by SI 2003/434).

6 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 9(5).

285 Special allowances in addition to pension

NOTE 3--See *Hopkins v Secretary of State for Defence* [2004] EWHC 299 (Admin), [2004] All ER (D) 362 (Feb) (conditions relating to obtaining an additional pension allowance for an unmarried dependant living as a spouse were not discriminatory).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/286. Persons eligible to receive death pensions.

286. Persons eligible to receive death pensions.

Where the death of a member of the armed forces is due to service¹, a pension may be paid to his or her widow or widower². Moreover, subject to the fulfilment of the relevant conditions, a pension may be paid to or in respect of an unmarried dependant living with a member of the armed forces as a spouse, having in her charge a child of his³; and also to his legitimate or legitimated children, step-children, legally adopted children and, in certain circumstances, illegitimate and foster children⁴. A death which is certified as having been attributable to service for the purposes of a widow's pension is also so attributable for the purposes of a family pension⁵.

These pensions and allowances are not treated as income for any of the purposes of the income tax legislation⁶.

1 'Service' does not include non-active service in the reserve: *Minister of Pensions v Bird* (1944) 1 WPAR 21. As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

2 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 27(1), 29 (amended by SI 1986/592; SI 1996/2882; SI 1997/286; SI 2002/792). See also para 288 post.

3 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 30 (amended by SI 1984/1154; SI 1996/2882). It is, however, further necessary, to render her eligible for a pension, that she is in receipt of an allowance in respect of the child of the deceased who is in her charge: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 30(2) (amended by SI 1984/1154). See para 289 post.

4 See the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 35, 36, 37 (substituted by SI 2001/409; and amended by SI 2002/792). See also the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(2), Sch 4 item 19 (substituted by SI 2001/409); and para 290 post. Weekly payments to children who are total orphans (ie neither of whose parents is alive) are called 'pensions' and other payments to or in respect of children are called 'allowances': see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, arts 36, 37 (as so substituted and amended).

5 See *Secretary of State for Defence v Pensions Ombudsman* [2003] EWHC 713 (Ch).

6 See para 273 note 2 ante.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

286 Persons eligible to receive death pensions

NOTE 5--*Secretary of State*, cited, affirmed: [2003] EWCA Civ 1611, [2003] All ER (D) 270 (Nov).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/287. Funeral expenses.

287. Funeral expenses.

The Secretary of State may defray the reasonable funeral expenses¹ of any member of the armed forces who dies on or after 7 April 1997, provided that the death was due to service or occurred while he was receiving in-patient treatment in respect of a disablement for which an award was made² and the funeral has taken place within the British Islands or the Republic of Ireland³. Within three months of the funeral, either: (1) a claim must be made for funeral expenses; or (2) an inquiry must be made in person, in writing or orally to the Secretary of State or to an authorised agent about claiming funeral expenses and a claim must be made for such expenses within three months of the date the claim form is sent in response to that inquiry⁴.

1 'Reasonable funeral expenses' means expenses which the Secretary of State considers reasonable in relation to any of the following items, and after deduction of any amount payable in respect of death benefit in the Isle of Man or any of the Channel Islands: necessary documentation; transportation of the body but only within the British Islands and the Republic of Ireland; travelling costs of one return journey within the British Islands and the Republic of Ireland, by the responsible person to arrange and attend the funeral; funeral director's fees and disbursements including the cost of an ordinary coffin; transportation of the coffin and bearers and the cost of one other car; funeral ceremony fees; cemetery or cremation fees; the cost of flowers from the person responsible for the funeral up to £75; or up to £75 for extra costs because of the religion of the deceased member: Naval, Military and Air Forces etc (Disablement and Death) Services Pensions Order 1983, SI 1983/883, art 42A(1) (added by SI 1997/286; and amended by SI 2001/409). As to the Secretary of State see para 2 ante. For the meaning of 'British Islands' see para 68 note 3 ante.

2 ¹le under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended).

3 ¹bid art 42A(2) (added by SI 1997/286).

4 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 42A(2) (as added: see note 3 *supra*).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/289. Unmarried dependants living as spouses.

289. Unmarried dependants living as spouses.

A pension¹ may be paid to an unmarried dependant who lived as a spouse of a member of the armed forces whose death was due to service² if, and so long as, she has a child of the deceased's in her charge for whom she is receiving an allowance³, and for a further period of 13 weeks if the child dies before attaining the age of 16⁴. The rate of the pension is at the discretion of the Secretary of State, but must not exceed the specified limits⁵.

1 The pension may include, where appropriate, a rent allowance as for a widow or widower: see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 31(1) (amended by SI 1984/1154; SI 1989/156; SI 1993/598; SI 1996/2882; SI 2002/792); and para 288 ante.

2 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 30(1) (amended by SI 1984/1154). 'Unmarried dependant living as a spouse' is defined as: (1) in relation to a member of the armed forces whose disablement is due to service before the commencement of the 1914-18 war or after 30 September 1921, a person of the opposite sex wholly or substantially maintained by the member on a permanent bona fide domestic basis throughout the period beginning six months prior to the commencement of his service and continuing, where the member is disabled, up to the date of any award in respect of his disablement and, where the award is reviewed, up to the date of review or, where the member is dead, up to the date of his death; (2) in relation to a member whose disablement is due to service during the 1914-18 war, a woman living with a soldier, rating or airman as a wife if she has drawn in respect of him separation allowance as for a wife: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 1(2), Sch 4 item 51A (added by SI 1984/1154; and amended by SI 1996/1638). As to war pensions see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 595 et seq.

3 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 30(2) (amended by SI 1984/1154). As to allowances for children see para 290 post.

4 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 30(3), Sch 4 item 20 (art 30(3) amended by SI 1984/1154).

5 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 30(4) (amended by SI 1984/1154). For the maximum rate see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 32, Sch 2 Pt III para 1 (substituted by SI 2003/434). As to the Secretary of State see para 2 ante.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/B. AWARDS IN RESPECT OF SERVICE AFTER 2 SEPTEMBER 1939/291. Pensions and allowances to other dependants.

291. Pensions and allowances to other dependants.

Widows or widowers and unmarried dependants who lived as the spouses of severely disabled pensioners¹ may be granted temporary personal allowances for a period of 26 weeks following the death of the pensioner².

1 The members of the armed forces who died on or after 2 December 1963 and who were then in receipt of a constant attendance allowance, an unemployability allowance, or an allowance for a lowered standard of occupation: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 33(1) (amended by SI 2002/791). As to these allowances see para 285 ante.

2 Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 33(1), (2)(a), (3) (art 33(1) as amended: see note 1 supra). A widow, widower or unmarried dependant who is awarded such a personal allowance may also be awarded an additional allowance in respect of any child for whom an allowance was payable to the deceased member of the armed forces immediately before his death: art 33(4) (amended by SI 2002/791). As to the period for which any such additional allowance is payable see the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 33(4) (a); and as to the weekly rate payable see art 33(4)(b).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/C. PENSIONS APPEALS/292. Appeals on entitlement.

C. PENSIONS APPEALS

292. Appeals on entitlement.

Where any claim is made under the service pensions order¹ in respect of the disablement or death of any person, an appeal lies² to a pensions appeal tribunal³ against the rejection⁴ of the claim by the Secretary of State⁵ on any of the following grounds:

- 53 (1) that the injury⁶ on which the claim is based is not attributable⁷ to any relevant service⁸;
- 54 (2) that the injury does not fulfil the conditions that it existed before or arose during any relevant service and has been and remains aggravated by such service⁹;
- 55 (3) that the death in respect of which the claim is made was not due to or hastened¹⁰ by an injury which was attributable to any relevant service¹¹;
- 56 (4) that the death was not due to or hastened by the aggravation by any relevant service of an injury which existed before or arose during such service¹².

In any such appeal the issue is as to whether the claim was rightly rejected on the ground or grounds in question¹³.

Where, in the case of any such claim, the Secretary of State rejects the claimant's contention that aggravation¹⁴ of the injury on which the claim is based was suffered as a result of a particular period of relevant service¹⁵, an appeal lies to a pensions appeal tribunal on the issue whether the deceased suffered such aggravation as a result of such service during that period¹⁶. Where the Secretary of State withholds¹⁷ or reduces an award in respect of any such claim on the ground that the injury or death of the person in question on which the claim is based was caused or contributed to by that person's serious negligence or misconduct, an appeal lies to a pensions appeal tribunal on the issue whether the injury or death was so caused or contributed to¹⁸.

For the purpose of enabling appeals to be brought, where the Secretary of State rejects a claim on any of the grounds mentioned above, or otherwise deals with it¹⁹, he must notify the claimant of his decision, specifying the grounds on which it is made²⁰. In the absence of any appeal to a nominated judge of the High Court²¹, or of an application for a rehearing²², the tribunal's decision on any issue on which an appeal is brought is final and conclusive²³.

Where either the appellant or the Secretary of State is dissatisfied with the decision of a pensions appeal tribunal²⁴ as being erroneous in point of law²⁵, he may, with the leave²⁶ of the tribunal²⁷ or of a judge of the High Court nominated for the purpose by the Lord Chancellor, appeal to that judge²⁸, whose decision is final and conclusive²⁹.

Where an appeal³⁰ has been made to a tribunal and that appeal has been decided³¹, but subsequently, on an application made jointly by the appellant and the Secretary of State³², it appears to the appropriate authority³³ proper so to do by reason of the availability of fresh evidence or on the ground of the tribunal's decision being erroneous in point of law³⁴, that authority may direct that the tribunal's decision is to be treated as set aside and that the appeal from the decision of the Secretary of State must be heard again by the tribunal³⁵. Where a direction for rehearing is given, the Secretary of State may, within two months from the date of the direction, review his decision³⁶.

Appeals may also be brought to pensions appeal tribunals in connection with claims under various schemes other than the service pensions order³⁷.

In deciding any appeal, a pensions appeal tribunal: (a) need not consider any issue that is not raised by the appellant or the Secretary of State in relation to the appeal; and (b) must not take into account any circumstances not obtaining at the time when the decision appealed against was made³⁸.

1 ie the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883 (as amended): see para 275 et seq ante.

2 The rights of appeal discussed in this paragraph, and in paras 293-297 post, are those under the Pensions Appeal Tribunals Acts 1943 and 1949. The Pensions Appeal Tribunals Act 1943 is extended to permit of appeals in respect of claims under any instrument relating to members of the former armed forces of India and Burma (see the Social Security Act 1981 s 7; and the Pensions Appeal Tribunals Act (Modification) Order 1981, SI 1981/1541) and claims under the Polish Resettlement Act 1947 s 1: Pensions Appeal Tribunals Act 1943 s 1 (amended by the Pensions Act 1995 s 169(2)). As to the further extension of the Pensions Appeals Tribunals Act 1943 to permit appeals being brought or continued by another person after the death of the claimant see note 20 infra; and para 273 ante. Appeals under s 1 (ie those discussed in this paragraph) do not lie from the rejection of a claim in connection with service before 3 September 1939 (Pensions Appeal Tribunals Act 1949 s 1(2)), but substantially similar provisions are contained in the War Pensions (Administrative Provisions) Act 1919 s 8, relating to appeals in connection with claims arising out of service during the 1914-18 war, and these have occasionally been invoked in appeals relating to claims for widows' pensions arising out of such service.

3 As to the constitution of pensions appeal tribunals see para 296 post.

4 The rejection of a claim includes the cancellation of an award made on a claim: Pensions Appeal Tribunals Act 1943 s 12(2).

5 The functions of the Secretary of State for Social Security under the Pensions Appeals Tribunals Act 1943 have been transferred to the Secretary of State for Defence: see the Transfer of Functions (War Pensions etc) Order 2001, SI 2001/3506. As to the Secretary of State see para 2 ante.

6 'Injury' includes wound or disease: Pensions Appeal Tribunals Act 1943 s 12(1).

7 The issue of attributability may be raised on appeal where the Secretary of State has accepted that the injury was aggravated by relevant service and the issue will then be whether the injury was attributable to such service: *ibid* s 1(2) (amended by the Pensions Appeal Tribunals Act 1949 s 1(1)).

8 Pensions Appeal Tribunals Act 1943 s 1(1)(a) (amended by the Pensions Appeal Tribunals Act 1949 s 1(1); and the Pensions Act 1995 s 169(2)). In relation to any claim made under the service pensions order (see note 1 supra), 'relevant service' means any service which is relevant for the purposes of that claim: Pensions Appeal Tribunals Act 1943 s 12(1) (definition substituted by the Pensions Appeal Tribunals Act 1949 s 1(1); and amended by the Pensions Act 1995 s 169(5)).

9 Pensions Appeal Tribunals Act 1943 s 1(1)(b) (amended by the Pensions Appeal Tribunals Act 1949 s 1(1)).

10 Where the claim is in respect of a death occurring more than seven years after termination of service, the rejection must be on the ground that the death was not due to or substantially hastened by an attributable injury nor by the aggravation by service of a pre-existing injury: see the Pensions Appeal Tribunals Act 1943 s 1(3A) (added by the Pensions Appeal Tribunals Act (Modification) Order 1947, SR & O 1947/1143, art 1; and amended by the Pensions Appeal Tribunals Act 1949 s 1(1); and the Pensions Act 1995 s 169(2)). Cf para 277 text and note 10 ante.

11 Pensions Appeal Tribunals Act 1943 s 1(3)(a) (amended by the Pensions Appeal Tribunals Act 1949 s 1(1); and the Pensions Act 1995 s 169(2)).

12 Pensions Appeal Tribunals Act 1943 s 1(3)(b) (amended by the Pensions Appeal Tribunals Act 1949 s 1(1); and the Pensions Act 1995 s 169(2)).

13 See the Pensions Appeal Tribunals Act 1943 s 1(1), (3), (3A) (s 1(1) as amended (see notes 8, 9 supra); s 1(3) as amended (see notes 11, 12 supra); s 1(3A) as added (see note 10 supra)).

14 If death has occurred the aggravation must have persisted until death: *ibid* s 1(4).

15 The period of service may be significant in determining, for the purpose of the claim, the relevant rank of the disabled or deceased person, or whether there were any, and if so what, eligible members of his family at the relevant date: see *ibid* s 1(4)(i), (ii).

16 *Ibid* s 1(4) (amended by the Pensions Appeal Tribunals Act 1949 s 1(1)).

17 The withholding of an award includes the cancellation of an award made on a claim: Pensions Appeal Tribunals Act 1943 s 12(2).

18 *Ibid* s 4(1). When an appeal is brought on any question of entitlement, and the Secretary of State notifies the appellant before the hearing of the appeal that if it is allowed he intends to withhold or reduce the award on the ground of contributory negligence (ie under s 4(1)), the tribunal must, if it allows the appeal, determine the issue of contributory negligence; but if the Secretary of State does not so notify the appellant he will not be entitled, if the appeal is allowed, to withhold or reduce the award on that ground: s 4(2).

19 *Ie* in the manner described in the text to note 18 *supra*.

20 See the Pensions Appeal Tribunals Act 1943 ss 1(1), (2), (3), (3A), (4), 4(1) (s 1(1) as amended (see notes 8, 9 *supra*); s 1(2) as amended (see note 7 *supra*); s 1(3) as amended (see notes 11, 12 *supra*); s 1(3A) as added (see note 10 *supra*); s 1(4) as amended (see note 16 *supra*)). Where the claimant dies before the decision has been notified to him, the Secretary of State, on becoming aware of that death and of the existence and identity of the designated person, must notify that person of his decision, and the designated person may then appeal against that decision: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 3(1) (amended by SI 2001/408). For the meaning of 'designated person' see para 273 note 7 *ante*. Where the decision by the Secretary of State has been notified to the claimant during his lifetime but he has not appealed against it before his death, the designated person may appeal against that decision as though the claimant had not died and the appeal were brought by him, but no award may be made in consequence of that appeal in respect of any period after the claimant's death: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 3(2) (amended by SI 2001/408). An appeal must be made within six months from the date of notification to the claimant: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 3(3) (added by SI 2001/408). Where a designated person satisfies the Secretary of State that: (1) he would have brought an appeal on a date ('the earlier date') earlier than that on which he actually did so ('the actual date') but for the fact that he was incapable of so doing or instructing someone to act on his behalf by reason of: (a) the death or serious illness of the designated person or a spouse or dependant of that person; (b) the disruption of normal postal services; (c) failure on the part of the Secretary of State to notify the claimant or the designated person of the decision; or (d) exceptional circumstances applying to the designated person which rendered it impracticable for him to bring the appeal or to instruct another person to bring it; and (2) the appeal was in any event made or brought as soon as was reasonably practicable in the circumstances of the case, then the reference in the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 3(3) (as added) to six months from the date of notification is to be treated as a reference to not later than 12 months after the expiry of the time limit provided for in art 3(3) (as added): art 3(5) (added by SI 2001/408). Where a claimant dies after bringing an appeal to a pensions appeal tribunal, but before a decision on the appeal has been given, the designated person may continue the appeal in place of the claimant, and this right extends to the continuance of an appeal in an assessment appeal (see para 293 *post*) and not merely to an entitlement appeal: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 5 (amended by SI 2001/408). Any appeal brought or continued under the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 3 (as amended) or art 5 (as amended) is subject to directions by the President of the Pensions Appeal Tribunals, who may direct that the designated person may bring or continue the appeal even though no probate or letters of administration have been granted: art 6. As to modifications of procedure applicable to appeals brought or continued by a designated person see the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, rr 3(2), (3), 24, 26 (amended by SI 1998/1201). Where the decision of a pensions appeal tribunal in any appeal brought or continued by a designated person after the claimant's death is in favour of the claimant, the Secretary of State may make an award implementing the decision of the tribunal in accordance with the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 68(3). As to posthumous appeals generally see para 273 *ante*. As to the President of the Pensions Appeal Tribunals see para 296 *post*.

21 As to appeals to the High Court see the text and notes 24-29 *infra*.

22 As to rehearings see the text and notes 30-36 *infra*.

23 Pensions Appeal Tribunals Act 1943 s 6(3) (amended by the Chronically Sick and Disabled Persons Act 1970 s 23(1), (4)).

24 *Ie* under the Pensions Appeal Tribunals Act 1943 s 1 (as amended), s 2, s 3, s 4 or s 5A (as added): s 6(2) (amended by the Child Support, Pensions and Social Security Act 2000 s 57(2)). Where a claimant who has appealed to a pensions appeal tribunal dies before its decision has been communicated to him, the Secretary of State must, within seven days of the decision or of his becoming aware of the existence of the designated

person, communicate that decision to the designated person for the purpose of appealing to the court against the decision under the Pensions Appeal Tribunals Act 1943 s 6(2) (as amended): see the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 4(1). As to pensions appeals see also WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 624.

25 The question whether a particular inference of fact may be drawn from facts which have been specifically found by a tribunal is a question of law: *Miers v Minister of Pensions and National Insurance* (1964) 5 WPAR 673 at 674, 677 per Gorman J.

26 Once notification has been issued by the proper authority that leave to appeal has been granted, it may not be retracted whatever the reasons underlying it: *Heald v Minister of Pensions* [1947] 1 All ER 748, 1 WPAR 443.

27 A differently constituted tribunal may hear the application for leave to appeal: *Pinnell v Minister of Pensions* (1950) 4 WPAR 661. Reasons for refusing leave must be given by the chairman: *Lowe v Minister of Pensions* (1950) 4 WPAR 1015.

28 As to the procedure for appeals to the judge see para 297 post.

29 Pensions Appeal Tribunals Act 1943 s 6(2) (as amended: see note 24 supra). No appeal lies to the Court of Appeal from a decision of the nominated judge refusing leave because the Act itself expressly makes it a condition of any appeal from a decision of a tribunal that the appellant must obtain the leave of the tribunal or of the nominated High Court judge: *Ex p Aronsohn* [1946] 2 All ER 544, 1 WPAR 313, CA. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

30 In relation to appeals under the Pensions Appeal Tribunals Act 1943 s 1 (as amended), this reference to an appeal includes an appeal brought or continued by a designated person following the death of the original claimant: Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 7. As to posthumous appeals see note 20 supra.

31 Is the appeal to the tribunal whether with or without an appeal to the High Court from the tribunal's decision under the Pensions Appeal Tribunals Act 1943 s 1 (as amended), s 2, s 3, s 4 or s 5A (as added): s 6(2A) (added by the Chronically Sick and Disabled Persons Act 1970 s 23(1), (3); and amended by the Child Support, Pensions and Social Security Act 2000 s 57(3)).

32 The application must be made in like manner as an application for leave to appeal from a decision of a tribunal to the High Court: Pensions Appeal Tribunals Act 1943 s 6(2A)(b) (as added: see note 31 supra). See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 25(2)(b).

33 'The appropriate authority' means the President of the Pensions Appeal Tribunals: see the Pensions Appeal Tribunals Act 1943 s 6(2A)(b) (as added: see note 31 supra); and the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, rr 2(1)(i), 32(1) (amended by SI 2001/1183).

34 The tribunal's decision cannot be treated as having been set aside on the ground that it is erroneous in point of law if there has been an appeal from it to the High Court under the Pensions Appeal Tribunals Act 1943 s 6(2) (as amended) (see the text and notes 24-29 supra): s 6(2A)(b)(ii) (as added: see note 31 supra).

35 Ibid s 6(2A) (as added: see note 31 supra).

36 Ibid s 6(2C) (s 6(2C), (2D) added by the Social Security and Housing Benefits Act 1982 s 43(1)). If, on a review, the Secretary of State is of the opinion that there are grounds for revising his original decision, he must notify the appellant of his opinion and of the revision he proposes to make, and if the appellant withdraws his appeal against the original decision, he must revise it accordingly: Pensions Appeal Tribunals Act 1943 s 6(2D) (as so added). The validity of awards reviewed before the commencement of these provisions is saved by the Social Security and Housing Benefits Act 1982 s 43(2).

37 Is the scheme for the benefit of members of the mercantile marine (see the War Pensions (Mercantile Marine) Scheme 1964, SI 1964/2058 (as amended)), and other schemes for seafarers, and the scheme for the benefit of civilians (see the Personal Injuries (Civilians) Scheme 1983, SI 1983/686 (as amended)): see WAR AND ARMED CONFLICT vol 49(1) (Reissue) para 599 et seq.

38 Pensions Appeal Tribunals Act 1943 s 5B (added by the Child Support, Pensions and Social Security Act 2000 s 59).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

292-297 Pension Appeals

Functions of pensions appeal tribunals are transferred to the First-tier Tribunal appeals from which lie to the Upper Tribunal: see Transfer of Tribunal Functions Order 2008, SI 2008/2833.

292 Appeals on entitlement

NOTE 2--Polish Resettlement Act 1947 s 1 and War Pensions (Administrative Provisions) Act 1919 s 8 amended: Civil Partnership Act 2004 Sch 26 paras 10, 17. War Pensions (Administrative Provisions) Act 1919 s 8 amended: SI 2008/2833.

NOTE 10--1943 Act s 1(3A) further amended: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 15, 16--1943 Act s 1(4) further amended: Civil Partnership Act 2004 Sch 26 para 15.

NOTES 20, 24--SI 1980/1082 arts 3-6 amended: SI 2008/2683.

NOTE 20, 32, 33--SI 1980/1120 revoked: SI 2008/2683.

NOTE 20--SI 1980/1082 arts 3(1), 6 amended: SI 2005/245. SI 1980/1082 art 6 further amended: Constitutional Reform Act 2005 Sch 4 para 106.

NOTE 23--1943 Act s 6(3) further amended: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 3(4), Sch 3. For transitional provision see Armed Forces (Pensions and Compensation) Act 2004 (Transitional Provision) Order 2005, SI 2005/660.

NOTE 24--1943 Act s 6(2) repealed: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 3(2), Sch 3. Replaced by 1943 Act ss 6A (appeals from tribunal to social security commissioner), 6B (redetermination etc of appeals by tribunal), 6C (appeals from commissioner) and 6D (procedure in proceedings before commissioner) (ss 6A-6D added by the Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 4). Regulations under the 1943 Act ss 6A-6D are to be made by the Lord Chancellor: s 11A (added by the Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 6). For transitional provision see SI 2005/660, NOTE 23.

NOTES 31-35--1943 Act s 6(2A), (2B) repealed: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 3(2), Sch 3. For transitional provision see SI 2005/660, NOTE 23.

NOTE 36--1943 Act s 6(2C) amended: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 3(3). For transitional provision see SI 2005/660, NOTE 23.

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293. Appeals against assessments of degree of disablement.

Any assessment by the Secretary of State of the degree of disablement¹ of a claimant, and any decision by him that there is no disablement, or that the disablement has come to an end, must be notified to the claimant². Where the Secretary of State makes an interim assessment³, an appeal lies to a pensions appeal tribunal⁴ against the first and any subsequent interim assessment⁵. Where it appears to the Secretary of State that the circumstances of the case⁶ permit a final settlement of the question as to the extent, if any, to which the claimant is disabled, and decides that there is no disablement or that any disablement has come to an end, or makes a final assessment of the degree or nature of disablement⁷, an appeal lies to a pensions appeal tribunal on the issue of: (1) whether the circumstances of the case permit a final settlement of the question as to the extent, if any, to which the person concerned is disabled⁸; or (2) whether a decision by the Secretary of State that there was no disablement or that the disablement had come to an end was right, or (as the case may be) whether his final assessment of the degree or nature of a disablement was correct⁹.

No appeal lies to the nominated judge¹⁰ from the decision of a pensions appeal tribunal on any of these issues, and the tribunal's decision is final and conclusive¹¹.

Appeals concerning assessments under certain other schemes also lie to pensions appeal tribunals¹².

1 le the disablement due to service or caused by the qualifying injury.

2 Pensions Appeal Tribunals Act 1943 s 5(1), (2). As to the continuance of an assessment appeal after the death of the claimant see para 292 note 20 ante. As to the Secretary of State see para 2 ante.

3 An interim assessment must be made unless the condition of the person by or in respect of whom the claim is made permits a final assessment of the extent, if any, of the disablement: Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983, SI 1983/883, art 9(2)(d). As to assessments generally see para 283 ante.

4 As to the constitution and procedure of pensions appeal tribunals see para 296 post.

5 Pensions Appeal Tribunals Act 1943 s 5(1) (amended by the Chronically Sick and Disabled Persons Act 1970 s 23(1), (2)(a)). The tribunal may uphold the assessment of the Secretary of State, or alter it by increasing or reducing the degree of disablement which it specifies and/or by reducing the period for which the assessment is to be in force: Pensions Appeal Tribunals Act 1943 s 5(1) (amended by the Social Security Act 1980 s 16(3)).

6 le because the person's condition permits of a final assessment of that question: see note 3 supra.

7 See the Pensions Appeal Tribunals Act 1943 s 5(2)(a), (b).

8 Ibid s 5(2)(i).

9 Ibid s 5(2)(ii). The tribunal may set aside the decision or assessment of the Secretary of State on the ground that the circumstances of the case do not permit such a final settlement, or may uphold that decision or assessment, or may make such final assessment of the degree or nature of the disablement as it thinks proper (which may be higher or lower than that of the Secretary of State); alternatively, if the tribunal sets aside the decision or assessment of the Secretary of State, it may itself make such an interim assessment of the degree or nature of the disablement, to be in force until such date not later than two years after its assessment, as it thinks proper: s 5(2) (amended by the Chronically Sick and Disabled Persons Act 1970 s 23(1), (2)(c)).

10 As to appeals to the nominated judge see para 292 ante.

11 See the Pensions Appeal Tribunals Act 1943 s 6(2), (3) (s 6(2) amended by the Child Support, Pensions and Social Security Act 2000 s 57(2)). See also *Morris v Minister of Pensions* [1948] 1 All ER 748, 3 WPAR 1603.

12 See para 292 text and note 37 ante; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 624.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

292-297 Pension Appeals

Functions of pensions appeal tribunals are transferred to the First-tier Tribunal appeals from which lie to the Upper Tribunal: see Transfer of Tribunal Functions Order 2008, SI 2008/2833.

293 Appeals against assessments of degree of disablement

NOTE 11--1943 Act s 6(2) repealed: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 3(2), Sch 3. For transitional provision see SI 2005/660.

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294. Appeals in other cases.

Where, in the case of certain claims¹, the Secretary of State makes a specified decision: (1) he must notify the claimant of the decision, specifying the ground on which it is made; and (2) thereupon an appeal against the decision lies to a pensions appeal tribunal on the issue whether the decision was rightly made on that ground². For these purposes, a 'specified decision' is a decision (other than a decision which is capable of being the subject of an appeal under any other provision³) which is of a kind specified by the Secretary of State in regulations made by statutory instrument⁴. Any such regulations must not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament⁵.

1 Ie any such claim as is referred to in the Pensions Appeal Tribunals Act 1943 s 1 (as amended), s 2 or s 3: see para 292 ante; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 624.

2 Ibid s 5A(1) (s 5A added by the Child Support, Pensions and Social Security Act 2000 s 57(1)).

3 Ie any other provision of the Pensions Appeal Tribunals Act 1943.

4 Ibid s 5A(2) (as added: see note 2 supra). See the Pensions Appeal Tribunals (Additional Rights of Appeal) Regulations 2001, SI 2001/1031 (amended by SI 2001/4022).

5 Pensions Appeal Tribunals Act 1943 s 5A(3) (as added: see note 2 supra).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

292-297 Pension Appeals

Functions of pensions appeal tribunals are transferred to the First-tier Tribunal appeals from which lie to the Upper Tribunal: see Transfer of Tribunal Functions Order 2008, SI 2008/2833.

294 Appeals in other cases

NOTE 1--Or a claim under a scheme mentioned in the Armed Forces (Pensions and Compensation) Act 2004 s 1(2) (see PARA 266A): Pensions Appeal Tribunals Act 1943 s 5A(1), (1A) (s 5A(1) amended, s 5A(1A) added, by 2004 Act Sch 1 para 2).

NOTE 4--SI 2001/1031 further amended: SI 2006/2893. See also Pensions Appeal Tribunals (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Regulations 2005, SI 2005/1029 (amended by SI 2006/2892).

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295. Time for appealing.

There is a time limit for appealing against a decision of the Secretary of State for on entitlement to a pension¹. No appeal may be brought under any provision of the Pensions Appeal Tribunals Act 1943², unless notice of that appeal is given, in such manner as may be prescribed, not later than six months after the date on which the decision or assessment is notified to the claimant³. An application for leave to appeal from the decision of a pensions appeal tribunal to the nominated judge⁴ may be made either at the hearing immediately after the tribunal's decision is announced or by notice in writing sent to the Pensions Appeal Office within six weeks of the communication to the appellant of the tribunal's decision⁵. Application for leave to appeal may not be made to the nominated judge unless an application has been made to the tribunal and been refused, and must be made within 28 days of the date of the decision refusing it⁶. Where the application for leave to appeal to the nominated judge has been made to the tribunal outside the period of six weeks prescribed for the making of such an application and the tribunal has refused to extend the time, the judge has jurisdiction to give leave to appeal and to extend the time for so doing⁷.

Where an appeal lies against an interim assessment⁸, it must be brought within three months from the date of notification of the assessment⁹. An appeal against a final assessment must be brought within 12 months of its notification, subject to a like power of extension¹⁰.

1 In the case of decisions made before a date which the Secretary of State may by order appoint, such appeals must be brought not later than 12 months after that date: Pensions Appeal Tribunals Act 1943 s 8(1) (a). At the date at which this volume states the law no such order had been made. As to appeals on questions of entitlement see para 292 ante. As to the Secretary of State see para 2 ante.

2 *Ie* except *ibid* s 5(1) (as amended): see para 293 ante.

3 *Ibid* s 8(1) (amended by the Child Support, Pensions and Social Security Act 2000 s 58(1), Sch 9 Pt IV). The Pensions Appeal Tribunals Act 1943 enables the Secretary of State to amend s 8(1), (3) by regulations made by statutory instrument, so as to substitute a different number of months for any number of months specified there: s 8(4) (s 8(4)-(6) added by the Child Support, Pensions and Social Security Act 2000 s 58(2)). As to the effect of the amendment made by the Child Support, Pensions and Social Security Act 2000 s 58(1) on decisions and assessments made before the date on which that amending provision came into force see s 58(3), (4). Section 58(1) came into force for certain purposes on 15 November 2000 and for remaining purposes on 9 April 2001: Child Support, Pensions and Social Security Act 2000 (Commencement No 3) Order 2000, SI 2000/2994.

The Secretary of State may by regulations made by statutory instrument provide that the pensions appeal tribunal may, in circumstances prescribed in the regulations, allow an appeal to be brought not later than 12 months after the end of any period limited by the Pensions Appeal Tribunals Act 1943 s 8 (as amended): s 8(5) (as so added). As to the regulations that have been made see the Pensions Appeal Tribunals (Late Appeals) Regulations 2001, SI 2001/1032.

Regulations under the Pensions Appeal Tribunals Act 1943 s 8(4) (as added) or s 8(5) (as added) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 8(6) (as so added).

4 *Ie* the judge nominated under the Pensions Appeal Tribunals Act 1943 s 6(2): see para 292 ante.

5 Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 25(2).

6 CPR *Practice Direction--Appeals* PD 52 para 22.5(1), (2).

7 *James v Minister of Pensions* [1947] KB 867, [1947] 2 All ER 432, 1 WPAR 629, where it was held that the pensions appeal tribunals rules then in force did not bind the judge, who was governed only by the Pensions

Appeal Tribunals Act 1943 (which contains no time limit for appealing to the judge) and by the Rules of the Supreme Court (which did prescribe a time limit of 28 days, but also empowered the judge to extend that limit).

8 As to interim assessments see para 293 ante.

9 Pensions Appeal Tribunals Act 1943 s 8(3)(c).

10 Ibid s 8(1)(c).

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

292-297 Pension Appeals

Functions of pensions appeal tribunals are transferred to the First-tier Tribunal appeals from which lie to the Upper Tribunal: see Transfer of Tribunal Functions Order 2008, SI 2008/2833.

295 Time for appealing

NOTES 3, 9, 10--1943 Act s 8(1), (3) amended: 2004 Act Sch 1 para5.

NOTE 3--See *R (on the application of the Secretary of State for Defence) v Pensions Appeal Tribunal* [2007] EWHC 1177 (Admin), [2008] 1 All ER 287.

NOTE 4--1943 s 6(2) repealed: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 3(2), Sch 3.

TEXT AND NOTE 5--SI 1980/1120 revoked: SI 2008/2683.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iii) War and Disablement Pensions/C. PENSIONS APPEALS/296. Constitution and procedure of tribunals.

296. Constitution and procedure of tribunals.

The number of pensions appeal tribunals and when and where they should sit are determined by the Lord Chancellor¹, who is also responsible for appointing and removing members, whose remuneration and allowances are fixed by the Treasury². A President of Pensions Appeal Tribunals and a Deputy President of Pensions Appeal Tribunals may be appointed by the Lord Chancellor³.

The members of the tribunal hearing a particular appeal must in every case include a legally qualified member⁴; and only a legally qualified member may preside as chairman for the hearing of any appeal⁵. The President of Pensions Appeal Tribunals for any part of the United Kingdom may give directions as to: (1) the number of members of the tribunal who should hear an appeal in that part of the United Kingdom; (2) the extent to which the members hearing such an appeal must include: (a) medically qualified persons⁶; and (b) persons who are neither legally qualified nor medically qualified; (3) the extent to which in the case of such an appeal the members hearing it must include persons satisfying other requirements specified by the President; and (4) the manner of determining the members who are to serve as the chairman and members of the tribunal for the hearing of such an appeal⁷.

The President of Pensions Appeal Tribunals for any part of the United Kingdom may give directions as to the practice and procedure to be followed by pensions appeal tribunals in that part of the United Kingdom⁸. No court fees may be charged⁹. Subject to these provisions, the practice and procedure is laid down in rules made by the Lord Chancellor¹⁰, which must provide, inter alia, for the payment of certain expenses of specified persons¹¹.

The rules made by the Lord Chancellor also regulate numerous procedural matters, including the form of notices of appeal¹², the statement of the case by the Secretary of State and the appellant's answer¹³, the production of official documents¹⁴, the evidence to be given¹⁵, the procedure at hearings¹⁶, adjournments¹⁷ and the payment of expenses and allowances to the appellant and others and of fees to medical specialists and other experts¹⁸. If a tribunal considers that a difficult medical or other technical question arises, it may, before giving its decision, take the opinion of a medical specialist or other technical expert and, if it is a medical question, may arrange for the appellant to be examined by such a specialist¹⁹. If an appellant does not prosecute the appeal, it may be placed in the deferred list or struck out²⁰. At any time within 12 months after notice of that fact has been given²¹, the appellant may apply for an order that the case be restored to the list of cases for hearing²², but where no such application has been made within that time, or where an application has been made and refused, or no written notification has been received within that time²³ that the designated person wishes to proceed with the appeal, the appeal must be struck out²⁴. Special provision is made for appeals brought or continued by a designated person in place of a deceased claimant²⁵. A decision of a tribunal rejecting a claim for a pension must be unanimous²⁶.

1 Pensions Appeal Tribunals Act 1943 s 6(1), Schedule para 1. For further provision relating to the appointment of members of pensions appeal tribunals see Schedule paras 2A, 2B (both added by the Child Support, Pensions and Social Security Act 2000 s 60(3)). A member of a pensions appeal tribunal is now barred from legal practice: Courts and Legal Services Act 1990 Sch 11 (amended by the Child Support, Pensions and Social Security Act 2000 s 60(5)). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

2 Pensions Appeal Tribunals Act 1943 Schedule para 2 (substituted by the Judicial Pensions and Retirement Act 1993 s 26, Sch 6 para 39; and amended by the Child Support, Pensions and Social Security Act 2000 s 60(1), (2)). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. In making any appointment under this provision it is the duty of the Lord Chancellor to have regard to the desirability of having as members of the tribunals persons with knowledge or experience of matters relating to the disability of persons: Pensions Appeal Tribunals Act 1943 Schedule para 2A(4) (as added: see note 1 supra). Pensions appeal tribunals are subject to the supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 para 35. As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) paras 55-57.

3 Pensions Appeal Tribunals Act 1943 Schedule para 2B(1), (2) (as added: see note 1 supra). Only legally qualified members (see the text and note 4 infra) of a pensions appeal tribunal are eligible for such appointment: Schedule para 2B(3) (as so added). See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 2(1)(i). The Lord Chancellor, with Treasury approval, may pay a pension, allowance or gratuity in respect of the retirement or death of a president, and in certain circumstances may pay compensation to a president for loss of office: Judicial Pensions Act 1981 s 11; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670.

4 He who has a seven year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see para 359 note 7 ante): Pensions Appeal Tribunals Act 1943 Schedule para 2A(1)(a) (as added: see note 1 supra).

5 Ibid Schedule para 3 (substituted by the Child Support, Pensions and Social Security Act 2000 s 60(4)). All members are disqualified for membership of the House of Commons: House of Commons Disqualification Act 1975 s 1, Sch 1 Pt II; and see PARLIAMENT vol 78 (2010) PARA 908.

6 A person medically qualified is one who is a duly qualified medical practitioner (see MEDICAL PROFESSIONS vol 30(1) (Reissue) para 4) of not less than seven years' standing: Pensions Appeal Tribunals Act 1943 Schedule para 2A(1)(b), (3) (as added: see note 1 supra).

7 Ibid Schedule para 3A (Schedule paras 3A, 3B, 3C added by the Child Support, Pensions and Social Security Act 2000 s 60(4)). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

8 Pensions Appeal Tribunals Act 1943 Schedule para 3B (as added: see note 7 supra). The power to give directions under Schedule paras 3A, 3B (as added) is exercisable in relation to a particular appeal, to a category of appeal or to appeals generally: Schedule para 3C(1) (as added: see note 7 supra). If at any time there is, in the case of any part of the United Kingdom, neither a President of Pensions Appeal Tribunals nor a Deputy President, the power of the President to give directions under Schedule paras 3A, 3B (as added) is exercisable in England and Wales by the Lord Chancellor: Schedule para 3C(2)(a) (as so added). The power to give directions under Schedule paras 3A, 3B (as added) includes power to vary or revoke directions previously given: Schedule para 3C(3) (as so added).

9 Ibid Schedule para 4.

10 See ibid Schedule para 5(1); and the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120 (amended by SI 1986/366; SI 1998/1201; SI 2001/1183).

11 He sums in respect of expenses, allowances and fees connected with appeals to a pensions appeal tribunal, to persons (in specified circumstances) specified in the rules, and of such amounts as are determined by the Lord Chancellor with Treasury consent (see the Pensions Appeal Tribunals Act 1943 Schedule para 5(4) (b) (substituted by the Social Security Act 1980 s 16(6)); and the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670), and (where leave is obtained to appeal to the High Court, whether by the appellant or the Secretary of State) the costs of the appellant in connection with that appeal (see the Pensions Appeal Tribunals Act 1943 Schedule para 5(4)(c)). As to the rules giving effect to this provision see the text and note 18 infra. As to the Secretary of State see para 2 ante.

12 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 4 (amended by SI 1998/1201; SI 2001/3506). An applicant not residing in the United Kingdom at the time of notice of appeal may apply to have his appeal heard by a tribunal in Scotland or Northern Ireland rather than by one in England and Wales if he has a closer connection with Scotland or with Northern Ireland or there is some other good reason for transfer of proceedings: Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 32A (added by SI 1986/366).

13 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 5. Where the statement of case contains any medical opinions, these should be signed by the medical practitioner, giving his qualifications: *Moxon v Minister of Pensions* [1945] KB 490, [1945] 2 All ER 124, 1 WPAR 63 per Tucker J. As to the review of appeal documents, the procurement of further evidence and the making of directions on any

matter in connection with the appeal, see the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 5A (added by SI 1998/1201).

14 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 6.

15 See *ibid* r 12 (amended by SI 2002/3135).

16 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 13.

17 See *ibid* r 14. When during the hearing of an appeal there is a change in the composition of the tribunal, there must be a complete rehearing, and this requirement cannot be waived: *Nutton v Minister of Pensions and National Insurance* (1965) 5 WPAR 693.

18 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 27. As to the power to make such rules see note 11 *supra*.

Provision is also made for the payment of the appellant's costs of prosecuting or defending an appeal in the High Court, whether leave is obtained by the appellant or the Secretary of State, including the costs, as certified by the President of the Pensions Appeal Tribunals, of making or opposing an application for leave for such an appeal: see r 28(1). As to costs in cases where leave is refused on an application by the Secretary of State see r 28(2). As to the payment of any costs incurred by an appellant where an application is made for a rehearing (as to which see para 292 text and notes 30-35 *ante*) see r 29. The President of the Pensions Appeal Tribunals is the persons designated in the rules to deal with costs, and the court has no right to review his decisions on such questions: *Mansfield v Minister of Pensions (No 3)* (1952) 5 WPAR 111.

19 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 15(1), (2). The facts found by the tribunal, on which it asks for a medical opinion from the expert, should be clearly set out, not as matters of controversy, but as findings of fact by the tribunal: *Sharman v Minister of Pensions* (1953) 5 WPAR 269 at 282 per Ormerod J. It is outside the duty of a medical expert to whom a case is referred to comment on the acceptance or non-acceptance of evidence of pure questions of fact: *Sharman v Minister of Pensions and National Insurance (No 2)* (1953) 5 WPAR 320. It is most important that the independent medical expert should have the opportunity of seeing the views of each side: see *Fitzhugh v Minister of Pensions* (1948) 4 WPAR 101 at 111 per Denning J, where this had not occurred, and the case was remitted to the tribunal for further consideration. The tribunal is not bound to accept the opinion of the medical expert if there is other medical evidence which it prefers: *Kershaw v Minister of Pensions and National Insurance* (1954) 5 WPAR 387.

20 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 10 (amended by SI 2001/257). The person designated in the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 10 (as amended) to give such a direction is the President of the Pensions Appeal Tribunals, who will only do so if the appellant does not satisfy him that he had sufficient reason for his failure to prosecute the appeal.

21 *Ie* pursuant to *ibid* r 26(1).

22 See *ibid* r 26(3) (amended by SI 1998/1201). The President of the Pensions Appeal Tribunals may order that the case be restored to the court for hearing either unconditionally or subject to such terms and conditions as he thinks just (see the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 26(4)), but where the case has been placed in the deferred list pursuant to r 10 (as amended) (see the text and note 20 *supra*) (*ie* not pursuant to r 24 (as amended) on the death of the appellant before the hearing: see note 24 *infra*) it must be restored unconditionally to the list for hearing on the application of the appellant unless the President is satisfied that the appellant's failure to prosecute the appeal was due to his wilful default (see r 26(4) proviso).

23 *Ie* under *ibid* r 26(2A) (added by SI 1998/1201).

24 See the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 26(5) (amended by SI 1998/1201). When an appeal has been struck out, no further appeal in respect of the same matter may be brought without leave of the President, which may be granted unconditionally or subject to such terms and conditions as he thinks just: see the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 26(6), (7). Rule 26 (as amended) is made pursuant to the Pensions Appeal Tribunals Act 1943 s 6(2B) (added by the Social Security Act 1980 s 16(4)). As to the placing of an appeal on the deferred list because the appellant has died before the appeal to the tribunal has been decided see the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 24 (amended by SI 1998/1201). As to subsequent procedure in such cases see the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 26(2)-(7); and see further para 292 note 18 *ante*.

25 See *ibid* rr 3(2), (3), 24, 26 (amended by SI 1998/1201). As to posthumous claims see para 292 note 20 *ante*.

26 *Brain v Minister of Pensions, Wilkes v Minister of Pensions* [1947] KB 625, [1947] 1 All ER 892, 1 WPAR 477, following the decision of the Court of Session in *Brown v Minister of Pensions* (1946) 2 WPAR 461. See also *Minister of Pensions v Horsey* [1949] 2 KB 526, [1949] 2 All ER 314, 4 WPAR 421, where the unanimity rule was applied to the decision of a tribunal allowing a pension.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

292-297 Pension Appeals

Functions of pensions appeal tribunals are transferred to the First-tier Tribunal appeals from which lie to the Upper Tribunal: see Transfer of Tribunal Functions Order 2008, SI 2008/2833.

296 Constitution and procedure of tribunals

TEXT AND NOTES 1-11--1943 Act Schedule further amended: Constitutional Reform Act 2005 Sch 4 para 28; Tribunals, Courts and Enforcement Act 2007 Sch 10 para 3. See also 2005 Act ss 19, 85, Sch 7 para 4, Sch 14 Pt 3.

NOTE 1--Courts and Legal Services Act 1990 Sch 11 further amended: 2005 Act Sch 17 para 24 (not yet in force).

NOTE 2--Tribunals and Inquiries Act 1992 Sch 1 para 35 amended: SI 2008/2833.

TEXT AND NOTES 3, 10, 12-25--SI 1980/1120 revoked: SI 2008/2683.

NOTE 8--See *R (on the application of the Secretary of State for Defence) v President of the Pensions Appeal Tribunals (England and Wales)* [2004] EWHC 141 (Admin), [2004] All ER (D) 40 (Feb) (no general power for President of Pensions Appeal Tribunals to set aside a tribunal's decision on appeal).

NOTES 11, 12--1943 Act Schedule para 5 amended: Armed Forces (Pensions and Compensation) Act 2004 Sch 1 para 10, Sch 3.

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297. Procedure on appeal to the High Court.

An application for permission to appeal to the nominated judge¹ is instituted by filing a notice setting out the point of law as respects which the appellant alleges that the decision of a pensions appeal tribunal was wrong and the date of the tribunal's decision refusing permission to appeal². The court officer must then request the chairman of the tribunal to give the judge a written statement of the tribunal's reasons for refusing permission to appeal, and within seven days of receiving this request the chairman must comply with it³. Where permission to appeal was given by the tribunal, the appellant must file and serve the appellant's notice within 28 days after permission to appeal was given; and where permission to appeal is given by the judge, the appellant must serve the appellant's notice within 28 days after permission to appeal is given⁴.

Within 28 days after service of the notice of appeal on him, the chairman of the tribunal must: (1) state a case setting out the facts on which the decision appealed against was based; (2) file the case stated at the court; and (3) serve a copy of the case stated on the appellant and the respondent⁵.

A copy of the judge's order on the appeal must be sent by the court officer to the appellant, the respondent and the chairman of the tribunal⁶.

The Pensions Appeal Tribunals Acts 1943 and 1949 do not specify the orders which the court may make on an appeal against a decision of a pensions appeal tribunal, but the court has always maintained (as a necessary implication from the terms of the Acts) the right not only simply to dismiss an appeal or to allow it, but also to allow an appeal and remit the case to a tribunal for reconsideration⁷. A case may be so remitted: (a) where evidence has been wrongly admitted; (b) where evidence has been wrongly excluded; (c) where the tribunal has misdirected itself as to the law, and the facts are not sufficiently ascertained to enable the superior court to decide the case; (d) where there is reasonable doubt as to whether there has been such a misdirection; (e) where the procedure has been contrary to the rules⁸ or the requirements of justice; (f) where there is reasonable ground for thinking that the tribunal's decision may be erroneous but the facts are insufficiently stated; (g) where, in a case concerning a disease, the parties agree to a remit for the express purpose of obtaining an authoritative decision on it⁹; (h) where leave to appeal is granted long out of time; or (i) where there is no error of law but the parties agree to the case being remitted¹⁰ for further consideration¹¹.

Where the claimant dies before the tribunal's decision has been communicated to him¹², the Secretary of State must notify the designated person of the decision, and that person may then bring an appeal to the High Court¹³. Where the claimant dies after an appeal to the High Court has been brought, but before a decision has been reached, the designated person may continue the appeal¹⁴. Any appeal brought or continued under these provisions is subject to directions given by the nominated judge, who may direct that the appeal may be brought or continued notwithstanding that no probate or letters of administration have been granted¹⁵.

¹ ie the judge nominated under the Pensions Appeal Tribunals Act 1943 s 6(2) (as amended) (see para 292 ante).

² CPR *Practice Direction--Appeals* PD 52 para 22.5(3).

3 CPR *Practice Direction--Appeals* PD 52 para 22.5(4).

4 CPR *Practice Direction--Appeals* PD 52 para 22.5(5). If leave to appeal to the judge is granted, whether to the person who was the appellant before the tribunal or to the Secretary of State, the appellant is entitled to be paid the costs of the appeal, including any costs incurred in making or resisting an application to the tribunal or to the judge for leave to appeal, whatever the outcome of the appeal: Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120, r 28(1). The sums to be allowed are determined by the President of the Pensions Appeal Tribunals, who may tax the costs on the basis of the rules and scales applicable in the High Court: see r 28(1), (4). As to the costs of the appellant where the Secretary of State applies for leave and is refused see r 28(2). As to the Secretary of State see para 2 ante.

5 CPR *Practice Direction--Appeals* PD 52 para 22.5(6).

6 CPR *Practice Direction--Appeals* PD 52 para 22.5(7).

7 *Armstrong v Minister of Pensions* (1948) 3 WPAR 1449 at 1466 per Denning J. The procedure on appeal is governed by CPR Part 52, as modified by CPR *Practice Direction--Appeals* PD 52 para 22.5. As to appeals see CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

8 le the Pensions Appeal Tribunals (England and Wales) Rules 1980, SI 1980/1120 (as amended): see para 296 ante.

9 This is done especially when a disease of obscure origin first comes before the court.

10 This can only be done by consent, because the existence of new evidence does not constitute a point of law: *Bathie v Minister of Pensions and National Insurance* (1954) 5 WPAR 324.

11 *Armstrong v Minister of Pensions* (1948) 3 WPAR 1449 at 1466-1469 per Denning J, who also said that when a case is thus remitted the practice is to give liberty to both parties to adduce fresh evidence because both parties usually desire this.

12 Where the decision has been communicated to the claimant during his lifetime but he has not appealed, the designated person (see para 273 note 7 ante) may bring an appeal after the claimant's death, but only if the claimant's failure to bring an appeal was due either to physical or mental incapacity or to some error or misdirection of the Secretary of State or a pensions appeal tribunal: see the Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 4(2), (3).

13 Ibid art 4(1). As to posthumous appeals to pensions appeal tribunals see para 292 note 20 ante.

14 Ibid art 5 (amended by SI 2001/408).

15 Pensions Appeal Tribunals (Posthumous Appeals) Order 1980, SI 1980/1082, art 6. As to the implementation of any decision in favour of the claimant see para 292 note 20 ante.

UPDATE

263-297 Varieties of pensions; authority for the granting of pensions ... Procedure on appeal to the High Court

SI 1983/883 (as amended) consolidated in Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006, SI 2006/606 (amended by SI 2006/1455, SI 2007/909, SI 2008/679, SI 2008/2683, SI 2009/706).

292-297 Pension Appeals

Functions of pensions appeal tribunals are transferred to the First-tier Tribunal appeals from which lie to the Upper Tribunal: see Transfer of Tribunal Functions Order 2008, SI 2008/2833.

297 Procedure on appeal to the High Court

NOTE 4--SI 1980/1120 revoked: SI 2008/2683.

TEXT AND NOTES 12-15--SI 1980/1082 arts 3-6 amended: SI 2008/2683.

TEXT AND NOTES 13, 14--An appeal now lies the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 s 11: SI 1980/1082 arts 4(1), 5 (both amended by SI 2005/245, SI 2008/2683).

TEXT AND NOTE 15--SI 1980/1082 art 6 further amended: Constitutional Reform Act 2005 Sch 4 para 106.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iv) Funds and other Assistance for Ex-servicemen/298. Administration of funds for dependants of members of armed forces.

(iv) Funds and other Assistance for Ex-servicemen

298. Administration of funds for dependants of members of armed forces.

A Royal Patriotic Fund Corporation exists to administer its property, subject to any special trust relating to all or part of it, for the benefit of widows, children and other dependants of members of the armed forces of the Crown¹, and the corporation may solicit contributions from the public for its purposes².

1 See the Patriotic Fund Reorganisation Act 1903 ss 1, 2; and the Royal Patriotic Fund Corporation Act 1950 s 2. As to the constitution of the corporation, and its rights, powers and duties see the Patriotic Fund Reorganisation Act 1903 s 1(2), Sch 1 (amended by the Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, art 3(3)). The corporation has perpetual succession and a common seal: Patriotic Fund Reorganisation Act 1903 s 1(1). As to the power of the corporation see further the Naval and Military War Pensions etc Act 1915 s 6; and the War Pensions (Administrative Provisions) Act 1918 s 7.

2 Patriotic Fund Reorganisation Act 1903 s 1(2), Sch 1 para 14; Naval and Military War Pensions etc Act 1915 s 6(4). A statutory committee of the corporation was formed under the Naval and Military War Pensions etc Act 1915, but was dissolved by the Naval and Military War Pensions etc (Transfer of Powers) Act 1917 s 1 (repealed), and certain of its powers and functions were transferred to the special grants committee: see ss 1, 2(3) (repealed); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 625.

UPDATE

298 Administration of funds for dependants of members of armed forces

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 2008.

As to the transfer of property, rights and liabilities of the Royal Patriotic Fund Corporation to a registered charity established for the benefit of persons in need of assistance who are the widows or widowers, children or dependants, of persons who have served in the armed forces or the reserve forces, see Armed Forces (Pensions and Compensation) Act 2004 s 6, Sch 2; and Royal Patriotic Fund Corporation (Transfer of Property, Rights and Liabilities) Order 2005, SI 2005/3308.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iv) Funds and other Assistance for Ex-servicemen/299. The Drouly Fund, and the Soldiers' and Airmen's Effects Fund.

299. The Drouly Fund, and the Soldiers' and Airmen's Effects Fund.

A fund known as the Drouly Fund provides small annuities for 15 widows of officers of the military forces who are killed or die in service¹. The widows who are eligible to be nominated for such an annuity are those whose annual income does not exceed £30, exclusive of pension². There is also a Drouly bequest for the benefit of the Chelsea Hospital³.

Any unclaimed residue, that is the amount standing to the credit of any person who dies while subject to military or air force law, is applied to the Soldiers' and Airmen's Effects Fund for the benefit of widows and children or other near relatives of soldiers and airmen who have died during or after service⁴.

1 See the Drouly Fund Act 1838 s 1, Schedule. The fund was established in accordance with the will and codicil of Colonel John Drouly to aid a specified number of widows of captains, lieutenants, cornets or ensigns to be nominated by the Secretary at War and the Paymaster General. As to the devolution of functions to the Secretary of State for Defence see the Secretary at War Abolition Act 1863 (repealed); the Defence (Transfer of Functions) Act 1964 s 1(2); and para 2 ante. The fund continues to be vested in the Secretary of State for Defence and the Paymaster General, by whom it is administered. It is a public account in the Bank of England: Drouly Fund Act 1838 s 1. As to the Paymaster General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 714.

2 See *ibid* Schedule.

3 This fund is vested in the Paymaster General and is a public fund in the Bank of England: see *ibid* ss 2, 3.

4 Regimental Debts Act 1893 s 10(2); Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. The Soldiers' and Airmen's Effects Fund (created by Royal Warrant dated 22 August 1893) is vested in the Royal Patriotic Fund Corporation: see the Patriotic Fund Reorganisation Act 1903 s 3(1). As to the Royal Patriotic Fund Corporation see para 298 ante. The benefit of the fund was extended to airmen by the Royal Patriotic Fund Corporation Act 1950 s 1(2). The categories of widows, children and other relatives of deceased servicemen entitled to benefit have been extended: see s 1(1); and the Royal Warrant dated 26 July 1950. The residual amount to be remitted to the fund under the Regimental Debts Act 1893 s 10(2) includes any surplus pay remitted by a paymaster under the Act and all arrears of pay and allowances: see s 8(1). As to notices inviting claims on the estate of the deceased, to be published before disposal of the residue, and as to the disposal of the estate of a person who dies while subject to military or air force law, see para 220 ante.

UPDATE

299 The [Soldiers' and Airmen's Effects Fund]

TEXT AND NOTES 1-3--Repealed: Statute Law (Repeals) Act 200.

TEXT AND NOTE 4--Regimental Debts Act 1893 s 10(2) and Royal Patriotic Fund Corporation Act 1950 s 1(1) amended: Civil Partnership Act 2004 Sch 26 paras 6, 20.

NOTE 4--1903 Act s 3(1) repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iv) Funds and other Assistance for Ex-servicemen/300. Application of funds raised by voluntary subscriptions.

300. Application of funds raised by voluntary subscriptions.

Where any fund has been raised by voluntary contributions for the purpose of providing assistance in some specific form to disabled officers or men, or to the wives, widows, children or dependants of officers or men, and provision has been made for that assistance out of public money, the Secretary of State¹ may, on the application of the trustees or managing body of the fund, after taking such steps as he thinks desirable for ascertaining the wishes of subscribers, make with the concurrence of the trustees or managing body an order authorising the fund to be applied to any other purposes for the benefit of disabled officers or men or the wives, widows, children or dependants of officers or men as specified in the order, and the fund may be applied accordingly².

1 As to the Secretary of State see para 2 ante. See also para 265 note 6 ante.

2 Naval and Military War Pensions etc (Administrative Expenses) Act 1917 s 5; Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. Cf the power of the court to apply gifts of property cy-près, when, inter alia, the original purposes of the gifts have been adequately provided for by other means, under the Charities Act 1993 s 13(1)(e). As to the power to apply cy-près where the donors are unknown or have disclaimed see s 14(1). See further CHARITIES vol 8 (2010) PARAS 213, 215.

UPDATE

300 Application of funds raised by voluntary subscriptions

TEXT AND NOTE 2--1917 Act s 5 amended: Civil Partnership Act 2004 Sch 26 para 9(1).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/3. LAND AND AIR FORCES/(6) PENSIONS AND SERVICE CHARITIES/(iv) Funds and other Assistance for Ex-servicemen/301. Gifts of money or land; grants.

301. Gifts of money or land; grants.

The Secretary of State¹ or any county council may accept any gift, including land or any estate or interest in land, made by will or otherwise, to be applied wholly or mainly for the settlement or employment in agriculture on land in England or Wales of men who have served in the armed forces of the Crown².

The Secretary of State³ has power to accept gifts of money and securities to be applied in assisting disabled ex-officers and ex-servicemen and the dependants of deceased disabled ex-officers and ex-servicemen⁴.

The Secretary of State⁵ has certain duties, and a power to make grants, with respect to the care of children of officers and men or women on active service or deceased⁶.

1 le the Secretary of State for Environment, Food and Rural Affairs, previously the Minister for Agriculture, Fisheries and Food.

2 See the Sailors and Soldiers (Gifts for Land Settlement) Act 1916 s 1(1); the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548. See also the Ministry of Agriculture and Fisheries Act 1919 s 1; and the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554. These provisions, which originally also applied to Ireland, continue to apply to Northern Ireland and have been adapted accordingly: see the Sailors and Soldiers (Gifts for Land Settlement) Act 1916 s 1(1), (4); the Government of Ireland (Adaptation of Enactments) (No 3) Order 1922, SR & O 1922/183; the Transfer of Functions (Local Government etc) (Northern Ireland) Order 1973, SR & O (NI) 1973/256, art 3, Sch 2.

3 le the Secretary of State for Defence. See paras 2, 265 note 6 ante.

4 See the Naval and Military War Pensions &c (Administrative Expenses) Act 1917 s 6; the Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) paras 597, 615.

5 See note 3 supra.

6 See the War Pensions (Administrative Provisions) Act 1918 s 9(1), (5); the War Orphans Act 1942 s 1 (amended by the Armed Forces Act 1981 ss 20(1), 28(2), Sch 3 para 1(1), (5), Sch 5 Pt I); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 626.

UPDATE

301 Gifts of money or land; grants

NOTE 4--1917 Act s 6 amended: Civil Partnership Act 2004 Sch 26 para 9(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(i) The Basis and Scope of the Disciplinary Codes/302. The legal basis of the disciplinary codes.

4. DISCIPLINE IN THE ARMED FORCES

(1) GENERAL PROVISIONS AS TO DISCIPLINE

(i) The Basis and Scope of the Disciplinary Codes

302. The legal basis of the disciplinary codes.

The statutory disciplinary provisions applicable to persons subject to naval discipline, military or air force law¹, are contained respectively in the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955. These Acts are commonly referred to as 'the service discipline Acts'. Each of those Acts specifies the offences created by it and triable under it by service courts, and also the civil offences² for which persons subject to the Act in question can be tried, and the punishments applicable to each service offence³. As a result of amendments and additions made by the Armed Forces Act 1971, these offences and punishments now constitute a code which is common to all three service discipline Acts⁴, each of which also contains procedural provisions for dealing with service offences and related matters⁵.

1 As to the persons subject to naval discipline, military or air force law see para 306 et seq post.

2 As to civil offences see para 422 post.

3 See the Army Act 1955 ss 24-71B (as amended); the Air Force Act 1955 ss 24-71B (as amended); the Naval Discipline Act 1957 ss 2-43B (as amended); and para 391 et seq post.

4 For the provisions comprising the common code see note 3 supra. As to the common code see para 391 et seq post.

5 See the Army Act 1955 ss 74-143 (as amended); the Air Force Act 1955 ss 74-143 (as amended); and the Naval Discipline Act 1957 Pt II (ss 45-92) (as amended). Under each of the three service discipline Acts, various codes of procedural regulations or rules have been issued. Provision was made by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 for the provisions of the Army Act 1955 and the Air Force Act 1955 as to the investigation of charges, arrest and custody and trial and punishment to apply to offences committed against the original Army Act or the original Air Force Act (both repealed) if the offence in question could have been tried by court-martial, or dealt with summarily, under one of the former Acts by reason of the time or place of its commission; and for continuing offences, committed over a period beginning before and ending after the commencement of the Army Act 1955 and the Air Force Act 1955 (ie 1 January 1957), to be proceeded against solely under one or other of the Acts of 1955, if the offence infringed its provisions: see the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 para 2(1) proviso, (2), (3). Although these provisions have not yet been repealed, it seems that for all practical purposes they must be regarded as spent, except perhaps as regards a case of desertion where the desertion occurred before the commencement of the relevant discipline Act of 1955 and the offender has only now surrendered or been arrested.

UPDATE

302 The legal basis of the disciplinary codes

TEXT AND NOTES--Naval Discipline Act 1957, Army Act 1955 and Air Force Act 1955 replaced by the Armed Forces Act 2006 which provides a single, harmonised system governing all members of the armed forces.

NOTE 5--Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 s 2, Sch 1 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(i) The Basis and Scope of the Disciplinary Codes/303. Jurisdiction as affected by place of offence.

303. Jurisdiction as affected by place of offence.

Any naval, military or air force offence¹, or any civil offence², may be tried by court-martial under naval discipline, military or air force law, as the case may be, whether the offence was committed in the United Kingdom³ or elsewhere⁴, but a person may not be tried for a number of grave civil offences if committed in the United Kingdom⁵.

1 le any offence under the Naval Discipline Act 1957 ss 2-41 (as amended), the Army Act 1955 ss 24-69 (as amended), or the Air Force Act 1955 ss 24-69 (as amended); and as opposed to a civil offence (see note 2 infra).

2 As to civil offences see para 422 post.

3 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

4 As to the jurisdiction of naval courts-martial see the Naval Discipline Act 1957 s 48(1). As to civil offences under the Army Act 1955 see s 70(1); as to civil offences under the Air Force Act 1955 see s 70(1); and see para 422 post. The Army Act 1955 and the Air Force Act 1955 do not contain express provision conferring jurisdiction on army and air force courts-martial to try military and air force offences committed outside the United Kingdom, but this is to be inferred from the fact that each of the offence-creating provisions in each of those Acts provides that the offence in question is committed by 'any person subject to military or air force law' without any limiting words as to where the offence must be committed. Jurisdiction in respect of offences by persons subject to service law may in many cases be dual, in that it may exist in respect of the same offence under service law and under civil law, and in the latter case jurisdiction may lie with the courts of the United Kingdom or with foreign courts. Within the United Kingdom, the question as to which jurisdiction prevails depends on the nature, place and other circumstances of the alleged offence, and is governed by principles which have been agreed between the Home Office and the service authorities and which are now embodied in memoranda issued by the Home Office to chief officers of police and in regulations issued by the service authorities: see the Manual of Naval Law vol I Ch 1 arts J.0136, J.0147-J.0152; the Queen's Regulations for the Army 1975 paras J7.001-J7.016A; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 14 paras J944-J950. It has been held that where an offence has been committed in the United Kingdom by a person subject to service law in relation to government property at the barracks or camp or other place where he is stationed, he should be dealt with under service law: *R v Kirkup* (1950) 34 Cr App Rep 150, CCA. Outside the United Kingdom, the matter is governed by various Status of Forces Agreements, to which the United Kingdom government is a party, and which regulate the relations between United Kingdom forces and the authorities of friendly countries where they are stationed: see eg the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty (London, 19 June 1951; TS 3 (1955); Cmd 9363) (set out in the Manual of Naval Law vol III App VII; the Queen's Regulations for the Army 1975 para J7.014 Annex A(J)); and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 14 para J947 App 3A); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 324 et seq. Agreements arrived at between the United Kingdom government and other nations have in some instances been implemented by United Kingdom legislation, eg the Visiting Forces (British Commonwealth) Act 1933 (association between United Kingdom and other Commonwealth forces) and the Visiting Forces Act 1952 (the legal status of visiting forces in United Kingdom territory at the invitation of the United Kingdom government), and under each of which numerous Orders in Council and other instruments have been made: see paras 135 et seq, 255-256 ante.

5 See para 422 post.

UPDATE

303 Jurisdiction as affected by place of offence

TEXT AND NOTES--Naval Discipline Act 1957, Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to jurisdiction of the Court Martial see now the Armed Forces Act 2006 s 50 (see PARA 451) which provides that the Court Martial

has jurisdiction to try 'any service offence' without any limiting words as to where the offence must be committed.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(i) The Basis and Scope of the Disciplinary Codes/304. Limitation of time for trial of offences.

304. Limitation of time for trial of offences.

Where an offence is alleged to have been committed by a person while he was still subject to military or air force law¹, but he has since ceased to be subject to it, he may be treated as still subject to it²; however, proceedings may not be taken against him unless³: (1) in a case where the charge is one which may be dealt with summarily, the proceedings on the summary dealing with the charge are begun within three months or the trial by court-martial is begun within six months after he ceases to be subject to military or air force law⁴; (2) in a case where the charge is one which cannot be dealt with summarily, the trial is begun within six months after he ceases to be subject to military or air force law⁵. These time limits for commencement of proceedings do not apply to an offence of mutiny, or failing to suppress mutiny⁶, or desertion⁷, or to a civil offence⁸ where the civil offence is alleged to have been committed outside the United Kingdom⁹ and the Attorney General¹⁰ consents to the proceedings¹¹. Where, by virtue of any enactment, proceedings on indictment for any civil offence must be brought within a limited period, no proceedings may be taken against any person for an offence¹² corresponding to that civil offence¹³ unless the trial or proceedings on a summary dealing with the charge is or are begun before the end of that period¹⁴.

A person may not be tried who has ceased to be subject to naval discipline in relation to an offence committed while he was still subject to it¹⁵ unless the trial is begun within three months or, in the case of trial by court-martial, six months after he ceased to be subject to it¹⁶. These time limits for commencement of proceedings do not apply to an offence of mutiny or desertion or to a civil offence¹⁷ where the civil offence is alleged to have been committed outside the United Kingdom and the Attorney General consents to the trial¹⁸. Where, by virtue of any enactment, proceedings on indictment for any civil offence must be brought within a limited period, a person may not be tried for that offence¹⁹ unless the trial is begun within that period²⁰.

Where a retrial has been authorised by an order of the Courts-Martial Appeal Court²¹ or by the reviewing authority²², the time limits described above do not apply, but the retrial cannot take place unless the order convening the court-martial is issued within three months beginning with the date of the order for a retrial²³.

1 As to the persons subject to military or air force law see para 307 et seq post.

2 See the Army Act 1955 s 131(1) (amended by the Armed Forces Act 1981 s 6; the Armed Forces Act 1991 s 26, Sch 2 para 11(1), Sch 3; the Armed Forces Act 1996 s 35(2), Sch 7 Pt II; and the Armed Forces Discipline Act 2000 s 25, Sch 3 para 16); and the Air Force Act 1955 s 131(1) (amended by the Armed Forces Act 1981 s 6; the Armed Forces Act 1991 Sch 2 para 11(1), Sch 3; the Armed Forces Act 1996 Sch 7 Pt II; and the Armed Forces Discipline Act 2000 Sch 3 para 16). A person may not be arrested or kept in custody by virtue of the Army Act 1955 s 131(1) (as amended) or the Air Force Act 1955 s 131(1) (as amended) for an offence at any time after he has ceased to be triable for the offence: Army Act 1955 s 132(4); Air Force Act 1955 s 132(4).

3 See the Army Act 1955 s 132(3) (s 132(3) substituted, and s 132(3A) added, by the Armed Forces Act 1981 s 6(3)); and the Air Force Act 1955 s 132(3) (s 132(3) substituted, and s 132(3A) added, by the Armed Forces Act 1981 s 6(3), (4)).

4 Army Act 1955 s 132(3)(a) (as substituted: see note 3 supra); Air Force Act 1955 s 132(3)(a) (as substituted: see note 3 supra).

5 Army Act 1955 s 132(3)(b) (as substituted: see note 3 supra); Air Force Act 1955 s 132(3)(b) (as substituted: see note 3 supra).

6 le an offence against the Army Act 1955 s 31 (as amended) or s 32 (as amended), or the Air Force Act 1955 s 31 (as amended) or s 32 (as amended): see para 399 post.

7 For the purposes of the Army Act 1955 and the Air Force Act 1955, where a person who has committed the offence of desertion, other than desertion on active service, has since the offence served as a member of the regular forces or the regular air force continuously in an exemplary manner for not less than three years, he may not be tried for that offence: Army Act 1955 s 132(2); Air Force Act 1955 s 132(2). There is no corresponding provision in the Naval Discipline Act 1957. For the meaning of 'on active service' see para 305 post. For the meaning of 'regular forces' see para 191 ante. For the meaning of 'regular air force' see para 206 ante. As to desertion see para 404 post. As to waiver of trial for desertion when the offender confesses the offence, and the consequences of such waiver, see paras 373-374 post.

8 le an offence against the Army Act 1955 s 70 (as amended; prospectively further amended) or the Air Force Act 1955 s 70 (as amended; prospectively further amended): see para 422 post. For the meaning of 'civil offence' see para 422 note 2 post.

9 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

10 As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529 et seq.

11 See the Army Act 1955 s 132(3A) (as added: see note 3 supra); and the Air Force Act 1955 s 132(3A) (as added: see note 3 supra). See *R v Martin (Alan)* [1998] AC 917, [1998] 1 All ER 193, HL, where it was held that where a procedure had been approved by Parliament, the carrying out of that procedure could not of itself be categorised as an abuse of process (juvenile civilian subject to military law tried for murder by court-martial in Germany when the offence was committed in Germany).

12 le an offence against the Army Act 1955 s 70 (as amended; prospectively further amended) or the Air Force Act 1955 s 70 (as amended; prospectively further amended): see para 422 post.

13 As to the meaning of 'corresponding civil offence' see para 422 note 6 post.

14 See the Army Act 1955 s 132(1) (substituted by the Armed Forces Act 1986 s 7(1), (6)); and the Air Force Act 1955 s 132(1) (substituted by the Armed Forces Act 1986 s 7(1), (6)). The operation of the Army Act 1955 s 132(1) (as substituted) and the Air Force Act 1955 s 132(1) (as substituted) remain unaffected in relation to an offence if the offence was committed before 1 January 1987 and: (1) the period of three years beginning with the commission of the offence expired before that date; or (2) the offence is an offence under the Army Act 1955 s 70 (as amended; prospectively further amended) or the Air Force Act 1955 s 70 (as amended; prospectively further amended) (see para 422 post) and the period between the commission of the offence and that date was longer than the period within which proceedings for the corresponding civil offence must be taken: see the Armed Forces Act 1986 s 7(6).

15 le by virtue of the Naval Discipline Act 1957 s 51 (as amended): see para 335 post.

16 See *ibid* s 52(2) (amended by the Armed Forces Act 1981 s 6(6)). This provision is expressed to be without prejudice to the Naval Discipline Act 1957 s 52(1) (as substituted) (see the text and notes 19-20 *infra*), but subject to the provisions of s 52(3) (as substituted and amended) (see the text and notes 17-18 *infra*).

17 This is expressed to be without prejudice to *ibid* s 52(1) (as substituted): see the text to notes 19-20 *infra*. The text refers to a civil offence punishable under s 42 (as amended; prospectively further amended): see para 422 post.

18 See *ibid* s 52(3) (substituted by the Armed Forces Act 1971 s 41; and amended by the Armed Forces Act 1986 s 7(3)).

19 le under the Naval Discipline Act 1957 s 42 (as amended; prospectively further amended): see para 422 post.

20 Ibid s 52(1) (substituted by the Armed Forces Act 1986 s 7(2), (6)).

The operation of the Naval Discipline Act 1957 s 52 (as amended) remains unaffected in relation to an offence if the offence was committed before 1 January 1987 and: (1) the period of three years beginning with the commission of the offence expired before that date; or (2) the offence is an offence punishable under s 42 (as amended; prospectively further amended) (see para 422 post) and the period between the commission of the offence and that date was longer than the period within which proceedings for the corresponding civil offence must be taken: see the Armed Forces Act 1986 s 7(6).

21 le pursuant to the Courts-Martial (Appeals) Act 1968 s 19 (as amended): see para 549 post.

22 le pursuant to the Army Act 1955 s 113A(1) (as added and amended), the Air Force Act 1955 s 113A(1) (as added and amended), or the Naval Discipline Act 1957 s 71A (as added and amended). For the meaning of 'reviewing authority' see para 512 post.

See Application 38784/97 *Morris v United Kingdom* [2002] ECHR 38784/97, 34 EHRR 1253, where the European Court of Human Rights held that the review of a decision of a court-martial by a non-judicial authority was contrary to the notion of a court-martial's independence required by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134). The reasoning in *Morris v United Kingdom* supra was rejected in *R v Spear* [2002] UKHL 31, [2003] 1 AC 734, [2002] 3 All ER 1074, on the grounds that post-trial review involving only a reduction in sentence or the quashing of a conviction did not undermine the independence or impartiality of the court-martial.

23 See the Army Act 1955 s 113A(1) (s 113A added by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; and the Army Act 1955 s 113A(1) amended by the Armed Forces Act 1996 s 16, Sch 5 para 5); the Air Force Act 1955 s 113A(1) (s 113A added by the Courts-Martial (Appeals) Act 1968 Sch 4; and the Air Force Act 1955 s 113A(1) amended by the Armed Forces Act 1996 Sch 5 para 5); the Naval Discipline Act 1957 s 71A(1) (s 71A added by the Courts-Martial (Appeals) Act 1968 Sch 4; and the Naval Discipline Act 1957 s 71A(1) amended by the Armed Forces Act 1996 Sch 5 para 11); and the Courts-Martial (Appeals) Act 1968 s 20(1).

UPDATE

304 Limitation of time for trial of offences

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, Naval Discipline Act 1957 and Armed Forces Act 1986 repealed: Armed Forces Act 2006 Sch 17. As to the time limits for commencing proceedings for offences other than Reserve Forces Act offences, see now the Armed Forces Act 2006 ss 55-61. As to the time limits for Reserve Forces Act offences, see s 62. 'Reserve Forces Act offence' means an offence within s 50(2)(h) or (i) (ie (1) an offence under the Reserve Forces Act 1996 ss 95-97 (reserve forces offences) (see PARA 248); or (2) an offence under Sch 1 para 5(1) (false answer during enlistment in a reserve force) (see PARA 178) committed by a person within Sch 1 para 5(3)): Armed Forces Act 2006 s 62(3)(b).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(i) The Basis and Scope of the Disciplinary Codes/305. Meaning and effect of 'on active service'.

305. Meaning and effect of 'on active service'.

For the purposes of the Army Act 1955 and the Air Force Act 1955, 'on active service', in relation to a force, means that it is engaged in operations against an enemy¹, or is engaged elsewhere than in the United Kingdom² in operations for the protection of life or property³, or is in military occupation of a foreign country⁴. For the purposes of the Naval Discipline Act 1957, a force is deemed to be 'on active service' when engaged in operations against an enemy⁵, when situated in an area in which such operations are taking place, or when engaged elsewhere than in the United Kingdom in operations for the protection of life or property⁶.

In all three of the service discipline Acts⁷, 'on active service' in relation to a person, means that he is serving in or with a force which is on active service⁸.

Where any of Her Majesty's forces is serving outside the United Kingdom, and it appears to the appropriate authority⁹ that, by reason of the imminence or recent existence of active service, it is necessary for the public service that the force should be deemed to be on active service, that authority may declare that for a specified period not exceeding three months that force is to be deemed to be on active service¹⁰.

The existence of active service in relation to a force has the effect that: (1) army and air force offenders can be dealt with by field general courts-martial, which can be assembled and conducted, in situations of operational difficulty, more easily than general or district courts-martial¹¹; (2) larger fines can be imposed on servicemen for offences tried by court-martial, other than civil offences, thus tending to reduce the extent to which the punishment of detention needs to be used¹²; (3) civilians employed in the service of, or accompanying, a body of Her Majesty's forces (whether in the United Kingdom or elsewhere) which is on active service are subject to the whole of the disciplinary provisions of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, as the case may be¹³.

1 For the purposes of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, 'enemy' includes all persons engaged in armed operations against any of Her Majesty's forces or any forces co-operating with them, and also includes all armed mutineers, armed rebels, armed rioters and pirates: Army Act 1955 s 225(1) (definition amended by the Armed Forces Act 1966 s 28(2)); Air Force Act 1955 s 223(1) (definition amended by the Armed Forces Act 1966 s 28(2), (3)); Naval Discipline Act 1957 s 135(1) (definition amended by the Armed Forces Act 1966 s 36(2)). As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

2 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

3 For the purposes of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, 'property' includes real property in England and Wales or Northern Ireland, heritable property in Scotland, and property outside the United Kingdom of the nature of real property: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1).

4 Army Act 1955 ss 224(1), 225(1) (s 224(1) amended by the Armed Forces Act 1966 s 20(1), (4)); Air Force Act 1955 ss 222(1), 223(1) (s 222(1) amended by the Armed Forces Act 1966 s 20(1), (4)). For the purposes of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, 'foreign country' does not include the Republic of Ireland, and references in any of those Acts to foreign powers, aliens and foreign stations are to be construed accordingly: see the Armed Forces Act 1966 s 19 (amended by the Statute Law (Repeals) Act 1974).

5 See note 1 supra.

6 Naval Discipline Act 1957 s 134(1) (amended by the Armed Forces Act 1966 s 20(4)(c); and the Armed Forces Act 1971 s 74). See note 3 supra. Note that the definition of 'on active service' in the Naval Discipline Act

1957 s 134(1) (as amended), extends to cover not only a force engaged in operations against an enemy but also one which is situated in an area in which such operations are taking place and it contains no reference to a force in military occupation of a foreign country. It would seem that these differences spring from the differing operational roles of naval forces on the one hand and army and air forces on the other, which in turn give rise to differences in the operational situations in which naval forces and army and air forces are habitually placed.

7 As to the service discipline Acts see para 302 ante.

8 Army Act 1955 s 224(1); Air Force Act 1955 s 222(1); Naval Discipline Act 1957 s 134(1) (amended by the Armed Forces Act 1971 s 74).

9 For the purposes of the Army Act 1955 s 224 (as amended) and the Air Force Act 1955 s 224 (as amended), 'the appropriate authority' means the general officer or brigadier, or air officer, as the case may be, commanding the force, so however that where a military or air force is under the command of an officer of another of Her Majesty's forces that officer is the appropriate authority (eg a flag officer of the Royal Navy when an army force is under his command): see the Army Act 1955 s 224(8); and the Air Force Act 1955 s 222(8) (both amended by the Armed Forces Act 1966 ss 20(2), (4)(b), 37(2), Sch 5). For the purposes of the Naval Discipline Act 1957 s 134 (as amended), 'the appropriate authority' means the commander-in-chief or flag officer in operational command of the force: s 134(8) (s 134(2)-(9) added by the Armed Forces Act 1971 s 74).

10 Army Act 1955 s 224(2); Air Force Act 1955 s 222(2); Naval Discipline Act 1957 s 134(2) (as added: see note 9 supra). The declaration, and any direction by the Secretary of State in connection with it, comes into operation on being published in general orders (see the Army Act 1955 s 224(10); and the Air Force Act 1955 s 222(10)), or in local orders (see the Naval Discipline Act 1957 s 134(9) (as added: see note 9 supra)). As to the Secretary of State see para 2 ante. A declaration can be prolonged for a further specified period not exceeding three months if the appropriate authority thinks it is necessary: see the Army Act 1955 s 224(3); the Air Force Act 1955 s 222(3); and the Naval Discipline Act 1957 s 134(3) (as added: see note 9 supra). If that authority considers that a state of active service existing by reason only of a force being in military occupation of a foreign country (which is applicable to a military or air force only: see note 6 supra) or of deemed active service, need not continue, that authority may so declare, with effect from the coming into operation of the declaration: see the Army Act 1955 s 224(4); the Air Force Act 1955 s 222(4); and the Naval Discipline Act 1957 s 134(4) (as added: see note 9 supra). Before any declaration is made, the appropriate authority must, unless satisfied that it is not possible to communicate with sufficient speed with the Secretary of State, obtain his consent to the declaration; and if consent has not been obtained before the declaration is made, it must report the declaration to the Secretary of State with the utmost practicable speed: see the Army Act 1955 s 224(5); the Air Force Act 1955 s 222(5); and the Naval Discipline Act 1957 s 134(5) (as added: see note 9 supra). The Secretary of State may direct, with effect from the coming into force of the direction, that any declaration by which a force is deemed to be, or to continue, on active service is to cease to have effect, without prejudice to anything done by virtue of the declaration before the coming into force of the direction: see the Army Act 1955 s 224(6); the Air Force Act 1955 s 222(6); and the Naval Discipline Act 1957 s 134(6) (as added: see note 9 supra). A declaration has effect not only as respects the members of the force to which it relates, but also as respects other persons the application to whom of any provisions of one or other of the service discipline Acts depends on whether that force is on active service: see the Army Act 1955 s 224(7); the Air Force Act 1955 s 222(7); and the Naval Discipline Act 1957 s 134(7) (as added: see note 9 supra). As to the application of certain provisions of the service discipline Acts to civilians see para 311 post.

11 See the Army Act 1955 s 103A(1) (as added); the Air Force Act 1955 s 103A(1) (as added); and para 482 post. As to field general courts-martial see para 480 et seq post.

12 For the purposes of the navy, this distinction applies to offences other than civil offences however tried. See para 424 post.

13 See the Army Act 1955 s 209(1); the Air Force Act 1955 s 209(1); the Naval Discipline Act 1957 s 118(1); and para 311 post.

UPDATE

305 Meaning and effect of 'on active service'

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ii) Application of the Disciplinary Codes/306. Persons subject to naval discipline.

(ii) Application of the Disciplinary Codes

306. Persons subject to naval discipline.

The following persons are subject to naval discipline¹:

- 57 (1) officers² on the active list and every rating³ of the Royal Navy at all times⁴;
- 58 (2) officers on any retired or emergency list of officers of the Royal Navy from the time appointed for them to report or attend for any duty or service for which they are liable until duly released or discharged⁵;
- 59 (3) officers and ratings of any of the naval reserve forces⁶: (a) in permanent service on call out under any provision of the Reserve Forces Act 1980, the Reserve Forces Act 1996 or any other call out obligations of an officer⁷; (b) committed to undertake a period of full-time service⁸; (c) undertaking any training or duty (whether in pursuance of an obligation or not)⁹; or (d) serving on the permanent staff of the Royal Fleet Reserve or the Royal Naval Reserve¹⁰;
- 60 (4) chaplains in the Royal Navy or in the naval reserve forces, as other officers in those forces¹¹;
- 61 (5) naval pensioners recalled to the Royal Navy¹² from the time accepted into service until duly released or discharged¹³;
- 62 (6) persons not otherwise subject to naval discipline, other than members of the Sea Cadet Corps or the Combined Cadet Force and persons excepted by the Defence Council¹⁴, who volunteer or engage for service, training or exercise with the Royal Navy, during such service, training or exercise¹⁵;
- 63 (7) members of the armed forces of the Crown raised outside the United Kingdom¹⁶, or of armed forces, other than armed forces of the Crown, when ordered to be trained or exercised on board any of Her Majesty's ships¹⁷ or in any of Her Majesty's naval establishments¹⁸, unless excepted by the Defence Council¹⁹;
- 64 (8) officers, warrant officers, non-commissioned officers or marines of the marine forces²⁰, when borne on the books of any of Her Majesty's ships or naval establishments²¹;
- 65 (9) members of Her Majesty's coastguard service whenever, in emergency, that body is placed under the control of the Secretary of State²²;
- 66 (10) persons sentenced under the Naval Discipline Act 1957²³ to imprisonment or detention, until the expiration of the term of their sentences²⁴; and
- 67 (11) persons not otherwise subject to naval discipline who, while held in custody for spying, endeavouring to seduce a person subject to naval discipline from his duty or allegiance²⁵, or for an offence committed before ceasing to be subject to naval discipline²⁶, commit or are reasonably suspected of having committed what would be an offence against Part I of the Naval Discipline Act 1957²⁷ if committed by a person subject to it²⁸.

1 Persons subject, as members of the home forces, to the Naval Discipline Act 1957 are exempt from control under the Immigration Act 1971: see s 8(4), (6) (s 8(4) as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 89. As to the position of members of the naval forces while attached to the military or air forces, and vice versa, see para 309 post.

2 For the meaning of 'officer' see para 152 ante.

3 For the meaning of 'rating' see para 156 note 1 ante.

4 See the Naval Discipline Act 1957 s 111(1) (substituted by the Armed Forces Act 1976 s 4, Sch 2 para 2; and amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 para 23(a), Sch 7 Pt 6).

5 See the Naval Discipline Act 1957 s 111(2) (substituted by the Armed Forces Act 1976 Sch 2 para 2; and amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt III; and the Armed Forces Act 2001 Sch 6 para 23(b), Sch 7 Pt 6).

6 See the Naval Discipline Act 1957 s 111(3) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 12(1), (2)). For the meaning of 'naval reserve forces' see para 7 note 1 ante. As to the naval reserve forces see para 173 et seq ante.

7 See the Naval Discipline Act 1957 s 111(3)(a) (as substituted: see note 6 supra).

8 See *ibid* s 111(3)(b) (as substituted: see note 6 supra). The text refers to a commitment entered into under the Reserve Forces Act 1996 s 24: see para 242 ante.

9 See the Naval Discipline Act 1957 s 111(3)(c) (as substituted: see note 6 supra).

10 See *ibid* s 111(3)(d) (as substituted: see note 6 supra). As to the Royal Fleet Reserve see paras 173, 175-176 ante; and as to the Royal Naval Reserve see paras 173-174 ante.

11 See *ibid* s 111(8).

12 *Ie* under the Reserve Forces Act 1980 s 30 (as amended; prospectively repealed) or the Reserve Forces Act 1996 Pt VII (ss 65-77) (see para 246 ante).

13 See the Naval Discipline Act 1957 s 111(4) (amended by the Reserve Forces Act 1996 Sch 10 para 12(1), (3)).

14 As to the Defence Council see para 2 ante.

15 See the Naval Discipline Act 1957 s 111(5)(c), (d) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I; and the Armed Forces Act 1976 s 22(6), Sch 10).

16 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

17 For the meaning of 'Her Majesty's ships' see para 6 note 3 ante.

18 For the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

19 See the Naval Discipline Act 1957 s 111(6) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). See also paras 312-313 post. For the countries whose armed forces are excepted from this provision see the Manual of Naval Law vol I Ch 1 arts 0117-0119, vol III App VII. As to naval forces raised under the law of a colony see para 313 post. As to the meaning of 'colony' see para 20 note 4 ante.

Where by virtue of the Naval Discipline Act 1957 s 111 (as amended), the Naval Discipline Act 1957 applies to any person not being a member of the armed forces of the Crown, it applies to him (except so far as may be otherwise provided by regulations made by the Defence Council): (1) if he holds any rank or rate in any other naval, military or air forces, as it applies to a person holding the corresponding rank or rate in the armed forces of the Crown; (2) in any other case, as it applies to an able seaman: s 111(7). As to corresponding ranks see para 1 note 7 ante.

20 For the meaning of 'marine forces' see para 7 note 2 ante.

21 Naval Discipline Act 1957 s 112(1) (amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2)). Such persons remain also subject to military law at all times: see para 309 note 11 post. As to the modification of the Naval Discipline Act 1957 in its application to members of the marine forces see s 112(2), Sch 1 (as amended); and paras 186 ante, 425 et seq post.

22 See the Coastguard Act 1925 s 2(1) (as amended); and para 181 ante. See also para 7 text and notes 6-8 ante. As to the Secretary of State see para 2 ante.

23 *Ie* under the Naval Discipline Act 1957 Pt II (ss 45-92) (as amended).

24 See *ibid* s 119(1). In relation to such a person, the Act applies as it does to an able seaman: see s 119(1).

25 le in custody by virtue of *ibid* s 95 (as amended): see para 51 ante.

26 le in custody by virtue of *ibid* s 51 (as amended): see para 335 post.

27 le *ibid* Pt I (ss 1-43B) (as amended).

28 See *ibid* s 119(2). Where, by virtue of s 119(2), a person who does not hold any naval rank or rate is treated for the purpose of any provisions of the Naval Discipline Act 1957 as a person subject to that Act, the Act applies to him for that purpose: (1) if he holds any military or air force rank, as it applies to a person holding the corresponding naval rank or rate; (2) if he held any naval rank or rate or any military or air force rank when last subject to that Act apart from s 119, as it applies to a person holding that or the corresponding naval rank or rate; (3) in any other case, as it applies to an able seaman: s 119(3).

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

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307. Persons subject to military law.

The following persons are subject to military law¹:

- 68 (1) every officer holding a land forces commission² who is for the time being employed, or recalled for employment, in Her Majesty's service in any capacity in which he can be required to be employed as the holder of his commission³, and every officer holding such a commission who for the time being is not employed, or is not employed as mentioned, but is generally⁴ liable to be recalled to military service under Her Majesty⁵;
- 69 (2) every officer, not so subject to military law, who being the holder of a land forces commission is employed in Her Majesty's military service in employment of which it is an express condition that he is to be subject to military law while so employed⁶;
- 70 (3) every officer, not subject to military law under heads (1) and (2) above, who is employed otherwise than in Her Majesty's service with the approval of the Defence Council⁷ on the express condition that while so employed he is to be subject to military law⁸;
- 71 (4) every officer of the Territorial Army who is not a special member⁹;
- 72 (5) every officer of the Territorial Army who is a special member when in permanent service¹⁰, in full-time service¹¹, or undertaking any training or duty (whether in pursuance of an obligation or not)¹²;
- 73 (6) every officer of the Army Reserve¹³ when in permanent service, in full-time service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Army Reserve¹⁴;
- 74 (7) every warrant officer, non-commissioned officer and soldier of the regular forces¹⁵;
- 75 (8) every warrant officer, non-commissioned officer and man of the army reserve¹⁶ when in permanent service, in full-time service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the army reserve¹⁷;
- 76 (9) every warrant officer, non-commissioned officer and man of the Territorial Army when in permanent service, in full-time service, called out for home defence service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Territorial Army¹⁸;
- 77 (10) every person in receipt of a pension in respect of service in the regular forces, or of such service and other service, who is employed in Her Majesty's service as mentioned in head (2) above¹⁹;
- 78 (11) every person not otherwise subject to military law who is serving in any force raised by order of Her Majesty outside the United Kingdom²⁰ and who is under the command of an officer holding a land forces commission in the Territorial Army²¹.

1 Army Act 1955 s 205(1). Persons subject, as members of the home forces, to military law are exempt from control under the Immigration Act 1971: see s 8(4), (6) (s 8(4) as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 89. As to the position of members of the military forces while attached to the naval or air forces, and vice versa, see para 309 post.

- 2 For the purposes of the Army Act 1955 s 205 (as amended), any reference to a land forces commission includes a reference to a commission in the Royal Marines: s 210(2)(a). 'Commission' means a commission within the meaning of any Order of Her Majesty for the time being regulating the granting of commissions: Army Act 1955 s 205(1)(a). For the issue and form of commissions see eg the Officers' Commissions (Army) Order 1967 (23 March 1967). Officers commissioned in the Territorial Army since 1 April 1967 receive land forces commissions, but they are subject to military law not under the Army Act 1955 s 205(1)(a), but under s 205(1)(e) (as substituted) or s 205(1)(ea) (as added) (see heads (4) and (5) in the text and notes 9-12 *infra*).
- 3 See *ibid* s 205(1)(a). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(a); and para 308 *post*.
- 4 *Ie* except in specified circumstances: Army Act 1955 s 205(1)(b).
- 5 See *ibid* s 205(1)(b). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(b); and para 308 *post*.
- 6 See the Army Act 1955 s 205(1)(c). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(d); and para 308 *post*.
- 7 As to the Defence Council see para 2 *ante*.
- 8 See the Army Act 1955 s 205(1)(d) (s 205(1)(d), (2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(e) (as amended); and para 308 *post*. A certificate of the Defence Council that approval to the employment was given subject to the condition mentioned in head (3) in the text is conclusive evidence of the facts stated in the certificate: see the Army Act 1955 s 205(2) (as so amended).
- 9 *Ibid* s 205(1)(e) (s 205(1)(e) substituted, s 205(1)(ea), (eb) added, and s 205(1)(g), (h) amended, by the Reserve Forces Act 1996 s 131(1), Sch 10 para 1). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(f) (as substituted); and para 308 *post*. As to special members see para 251 *ante*. As to the Territorial Army see para 223 *et seq ante*.
- 10 'Permanent service' means permanent service on call out under any provision of the Reserve Forces Act 1980, the Reserve Forces Act 1996 or any other call out obligations of an officer: Army Act 1955 s 205(4) (added by the Reserve Forces Act 1996 s 131(1), Sch 10 para 2).
- 11 'Full-time service' means service under a commitment entered into under the Reserve Forces Act 1996 s 24 (commitment to undertake a period of full-time service: see para 242 *ante*): Army Act 1955 s 205(4) (as added: see note 10 *supra*).
- 12 *Ibid* s 205(1)(ea) (as added: see note 9 *supra*). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(ff) (as added); and para 308 *post*.
- 13 For the purposes of the Army Act 1955 s 205 (as amended), any reference to an officer of the Army Reserve includes a reference to an officer of the Royal Marines Reserve or a marine officer of the Royal Fleet Reserve: s 210(2)(aa) (s 210(2)(aa), (ba) added, and s 210(2)(b) substituted, by the Reserve Forces Act 1996 Sch 10 para 3). As to the Army Reserve see para 223 *et seq ante*; as to the Royal Marines Reserve see para 189 *ante*; and as to the Royal Fleet Reserve see paras 173, 175-176 *ante*.
- 14 Army Act 1955 s 205(1)(eb) (as added: see note 9 *supra*). For the purposes of s 205 (as amended), any reference to the permanent staff of the army reserve includes a reference to the permanent staff of the Royal Marines Reserve or the Royal Fleet Reserve: s 210(2)(ba) (as added: see note 13 *supra*).
- 15 *Ibid* s 205(1)(f). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(g); and para 308 *post*. For the meaning of 'regular forces' see para 191 *ante*.
- 16 For the purposes of the Army Act 1955 s 205 (as amended), any reference to a warrant officer, non-commissioned officer or man of the army reserve includes a reference to a warrant officer, non-commissioned officer or a marine of the Royal Marines Reserve and to a marine warrant officer or non-commissioned officer or a marine of the Royal Fleet Reserve: s 210(2)(b) (as substituted: see note 13 *supra*).
- 17 *Ibid* s 205(1)(g) (as amended: see note 9 *supra*). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(h) (as amended); and para 308 *post*.
- 18 Army Act 1955 s 205(1)(h) (as amended: see note 9 *supra*). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(i) (as amended); and para 308 *post*. As to the home defence service see para 232 note 4 *ante*.

19 Army Act 1955 s 205(1)(i). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(j); and para 308 post.

20 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

21 Army Act 1955 s 205(1)(j). As to the corresponding provision in the Air Force Act 1955 see s 205(1)(k); and para 308 post.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

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308. Persons subject to air force law.

The following persons are subject to air force law¹:

- 79 (1) every officer holding an air forces commission² who is for the time being employed, or recalled for employment, in Her Majesty's service in any capacity in which he can be required to be employed as the holder of his commission³, and every officer holding such a commission who for the time being is not employed, or is not employed as mentioned, but is generally⁴ liable to be recalled to air force service under Her Majesty⁵;
- 80 (2) every officer, not so subject to air force law, who being the holder of an air forces commission is employed in Her Majesty's service in employment of which it is an express condition that he is to be subject to air force law while so employed⁶;
- 81 (3) every officer, not subject to air force law under heads (1) and (2) above, who is employed otherwise than in Her Majesty's service with the approval of the Defence Council⁷ on the express condition that while so employed he is to be subject to air force law⁸;
- 82 (4) every officer of the air force reserve or Royal Auxiliary Air Force who is not a special member⁹;
- 83 (5) every officer of the air force reserve or Royal Auxiliary Air Force who is a special member, when in permanent service¹⁰, in full-time service¹¹, or undertaking any training or duty (whether in pursuance of an obligation or not)¹²;
- 84 (6) every warrant officer, non-commissioned officer and airman of the regular air force¹³;
- 85 (7) every warrant officer, non-commissioned officer and man of the air force reserve when in permanent service, in full-time service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the air force reserve¹⁴;
- 86 (8) every warrant officer, non-commissioned officer and man of the Royal Auxiliary Air Force when in permanent service, in full-time service, called out for home defence service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Royal Auxiliary Air Force¹⁵;
- 87 (9) every person in receipt of a pension in respect of service in the regular air force, or of such service and other service, who is employed in Her Majesty's service as mentioned in head (2) above¹⁶;
- 88 (10) every person not otherwise subject to air force law who is serving in any force raised by order of Her Majesty outside the United Kingdom¹⁷ and who is under the command of an officer holding an air forces commission¹⁸.

1 Air Force Act 1955 s 205(1). Persons subject, as members of the home forces, to air force law are exempt from control under the Immigration Act 1971: see s 8(4), (6) (s 8(4) as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) para 89. As to the position of members of the air forces while attached to the naval or military forces, and vice versa, see para 309 post.

2 For the purposes of the Air Force Act 1955 s 205 (as amended), 'air forces commission' means a commission in the Royal Air Force, the Air Force Reserve or the Royal Auxiliary Air Force: s 205(3) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 10). As to the Royal Air Force see para 206 et seq ante; as to the Air Force Reserve and the Royal Auxiliary Air Force see para 223 et seq ante.

- 3 Air Force Act 1955 s 205(1)(a). As to the corresponding provision in the Army Act 1955 see s 205(1)(a); and para 307 ante.
- 4 le except in specified circumstances: Air Force Act 1955 s 205(1)(b).
- 5 See *ibid* s 205(1)(b). As to the corresponding provision in the Army Act 1955 see s 205(1)(b); and para 307 ante.
- 6 See the Air Force Act 1955 s 205(1)(d). As to the corresponding provision in the Army Act 1955 see s 205(1)(c); and para 307 ante.
- 7 As to the Defence Council see para 2 ante.
- 8 Air Force Act 1955 s 205(1)(e) (s 205(1)(e), (2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I). As to the corresponding provision in the Army Act 1955 see s 205(1)(d) (as amended); and para 307 ante. A certificate of the Defence Council that approval to the employment was given subject to the condition mentioned in head (3) in the text is conclusive evidence of the facts stated in the certificate: Air Force Act 1955 s 205(2) (as so amended). As to the corresponding provision in the Army Act 1955 see s 205(2) (as amended); and para 307 ante.
- 9 Air Force Act 1955 s 205(f) (s 205(1)(f) substituted, s 205(1)(ff) added, and s 205(1)(h), (i) amended, by the Reserve Forces Act 1996 s 131(1), Sch 10 para 9). As to the corresponding provision in the Army Act 1955 see s 205(1)(e) (as substituted); and para 307 ante. As to special members see para 251 ante.
- 10 'Permanent service' means permanent service on call out under any provision of the Reserve Forces Act 1980, the Reserve Forces Act 1996 or any other call out obligations of an officer: Air Force Act 1955 s 205(3) (as substituted: see note 2 *supra*).
- 11 'Full-time service' means service under a commitment entered into under the Reserve Forces Act 1996 s 24 (commitment to undertake a period of full-time service: see para 242 ante): Air Force Act 1955 s 205(3) (as substituted: see note 2 *supra*).
- 12 *Ibid* s 205(1)(ff) (as added: see note 9 *supra*). As to the corresponding provision in the Army Act 1955 see s 205(1)(ea) (as added); and para 307 ante.
- 13 Air Force Act 1955 s 205(1)(g). For the meaning of 'regular air force' see para 206 ante. As to the corresponding provision in the Army Act 1955 see s 205(1)(f); and para 307 ante.
- 14 Air Force Act 1955 s 205(1)(h) (as amended: see note 9 *supra*). As to the corresponding provision in the Army Act 1955 see s 205(1)(g) (as amended); and para 307 ante.
- 15 Air Force Act 1955 s 205(1)(i) (as amended: see note 9 *supra*). As to the corresponding provision in the Army Act 1955 see s 205(1)(h) (as amended); and para 307 ante. As to the home defence service see para 232 note 4 ante.
- 16 Air Force Act 1955 s 205(1)(j). As to the corresponding provision in the Army Act 1955 see s 205(1)(i); and para 307 ante.
- 17 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.
- 18 Air Force Act 1955 s 205(1)(k). As to the corresponding provision in the Army Act 1955 see s 205(1)(j); and para 307 ante.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under

the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

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309. Application to attached servicemen of the law of the force to which they are attached.

When any member of Her Majesty's naval or air forces¹ is attached to any part of the regular forces², the Army Reserve³ or the Territorial Army⁴, he is subject to military law to the same extent as a member of that force⁵. Similarly, when any member of Her Majesty's naval or military forces is attached to any part of the regular air force, the Air Force Reserve⁶ or the Royal Auxiliary Air Force⁷, he is subject to air force law to a like extent⁸; and when any member of Her Majesty's military or air forces is attached to any of the naval forces⁹, he is subject to naval discipline¹⁰. Servicemen who, through attachment to a part of the armed forces other than their own, become subject to the law of the force to which they are attached do not, however, cease to be subject to the law of their own part of the armed forces¹¹.

1 Except where otherwise provided, 'Her Majesty's naval, military or air forces' does not include Commonwealth forces: see para 20 ante. For the meaning of 'Commonwealth force' see para 20 note 6 ante.

2 For the meaning of 'regular forces' see para 191 ante.

3 As to the Army Reserve see para 223 et seq ante.

4 As to the Territorial Army see para 223 et seq ante.

5 See the Army Act 1955 s 208. Various modifications in the application of military law to such attached personnel are made relating to punishments, the constitution of courts-martial, documentary evidence, corresponding ranks, the time limit for liability to trial, forfeitures and deductions, and the non-application of specified provisions of the Army Act 1955 relating to deductions from pay for the maintenance of dependants and for judgment debts: s 208, Sch 6 (amended by the Armed Forces Act 1966 ss 22(3), 37(2), Sch 5; the Armed Forces Act 1971 s 77(1), Sch 4 Pt I; the Armed Forces Act 1986 s 16(1), Sch 1 para 6(1); the Armed Forces Act 2001 ss 34, 38, Sch 6 para 43, Sch 7; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

6 As to the Air Force Reserve see para 223 et seq ante.

7 As to the Royal Auxiliary Air Force see para 223 et seq ante.

8 See the Air Force Act 1955 s 208. There are similar modifications to those specified in note 5 supra: see Sch 6 (amended by the Army and Air Force Act 1961 ss 37(1), (3), 38(1), Sch 2; the Armed Forces Act 1966 ss 22(3), 30(2), 37(2), Sch 5; the Armed Forces Act 1971 Sch 4 Pt I; the Armed Forces Act 1976 s 3(2), Sch 1 para 4; the Armed Forces Act 1986 Sch 1 para 6(2); the Armed Forces Act 2001 Sch 6 para 43, Sch 7 Pt 7; the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

9 Ie under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended): see paras 205, 214 ante.

10 See the Naval Discipline Act 1957 s 113(1). There are similar modifications to those specified in note 5 supra, but they are somewhat more limited: see s 113(2), Sch 2 (amended by the Armed Forces Act 1966 s 37(1), Schs 4, 5; the Armed Forces Act 1971 s 43, Sch 1 para 2(7), Sch 4 Pt I; the Armed Forces Act 1996 s 5, Sch 1 para 96; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

11 See the Army Act 1955 s 179(4); the Air Force Act 1955 s 179(4); and the Naval Discipline Act 1957 s 120(4). Similarly, an officer, warrant officer, non-commissioned officer, or marine of the Royal Marines or the Royal Marines Reserve, and a marine officer, marine warrant officer or non-commissioned officer, or a marine of the Royal Fleet Reserve, continues to be subject to military law notwithstanding that he may for the time being be subject to the Naval Discipline Act 1957: Army Act 1955 s 210(3) (amended by the Navy, Army and Air Force Reserves Act 1959 s 2, Schedule; the Armed Forces Act 1971 s 75, Sch 3 para 4(1); and the Reserve Forces Act

1996 s 131(1), Sch 10 para 4). As to the Royal Marines see para 182 et seq ante; as to the Royal Marines Reserve see para 189 ante; and as to the Royal Fleet Reserve see paras 173, 175-176 ante. For the power to attach servicemen to any part of Her Majesty's forces see the Army Act 1955 s 179(1), (2) (as amended); the Air Force Act 1955 s 179(1), (2) (as amended); the Naval Discipline Act 1957 s 120(1), (2) (as amended); and paras 158, 205, 214 ante.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

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310. Application of service discipline Acts to the reserve and auxiliary forces.

The majority of the provisions of the Army Act 1955 which are applicable to the regular forces¹, including those concerning discipline and the trial and punishment of military offences, apply, subject to exceptions and modifications², and only while they are subject to military law³, to officers of the Army Reserve, retired officers, warrant officers, non-commissioned officers and men of the Army Reserve and the Territorial Army⁴. They apply also to officers of the Territorial Army when in permanent service⁵, in full-time service⁶, called out for home defence service⁷, or undertaking any training⁸ or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Territorial Army⁹.

In like manner, and subject to similar exceptions and modifications¹⁰, the corresponding provisions of the Air Force Act 1955¹¹ apply, while they are subject to air force law¹², to retired officers¹³ and to warrant officers, non-commissioned officers and men of the Air Force Reserve and the Royal Auxiliary Air Force¹⁴. They apply also to officers of the Air Force Reserve when in permanent service, in full-time service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Air Force Reserve¹⁵, and to officers of the Royal Auxiliary Air Force when in permanent service, in full-time service, called out for home defence service, or undertaking any training or duty (whether in pursuance of an obligation or not), or when serving on the permanent staff of the Royal Auxiliary Air Force¹⁶.

The provisions of the Naval Discipline Act 1957 apply to officers and ratings of any of the naval reserve forces in permanent service on call out, committed to undertake a period of full-time service, undertaking any training or duty or serving on the permanent staff of the Royal Fleet Reserve or the Royal Naval Reserve. They apply to chaplains in the Royal Navy or in the naval reserve forces, as they do to other officers in those forces¹⁷.

1 le the Army Act 1955 Pt II (ss 24-143) (as amended), Pt III (ss 144-153) (as amended), Pt IV (ss 154-176) (as amended), Pt V (ss 177-204A) (as amended): see s 211(1). These provisions are subject to exceptions: see note 2 infra. In addition, the provisions of s 17(5), (6) (as amended) (relating to forfeiture of service for desertion: see para 199 ante) apply to warrant officers, non-commissioned officers and men of the Army Reserve and the Territorial Army as if the references to forfeited service were references to a period of permanent service or, as the case may be, of service as a member of the force concerned, which is to be disregarded under the Reserve Forces Act 1996 s 98(6): Army Act 1955 s 211(2) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 7(1), (3)). As to the Reserve Forces Act 1996 s 98 see para 248 ante. For the meaning of 'regular forces' see para 191 ante. As to the Army Reserve see para 223 et seq ante; and as to the Territorial Army see para 223 et seq ante.

2 As to the exceptions and modifications see the Army Act 1955 s 211(4) (as substituted), s 211(4A) (as added), s 211(6), (7) (as amended); and paras 247, 250 ante.

3 As to when these categories of personnel are subject to military law see para 307 ante.

4 See the Army Act 1955 s 211(1)(a), (c) (s 211(1)(a) amended, and s 211(1)(b) substituted, by the Reserve Forces Act 1996 Sch 10 para 7(1), (2)). See also para 191 ante.

5 'Permanent service' means permanent service on call out under any provision of the Reserve Forces Act 1980, the Reserve Forces Act 1996 or any other call out obligations of an officer: Army Act 1955 s 211(9) (added by the Reserve Forces Act 1996 Sch 10 para 7(1), (7)); Air Force Act 1955 s 210(9) (added by the Reserve Forces Act 1996 Sch 10 para 11(1), (7)). As to call out on occasions of emergency or in connection with warlike operations see para 232 ante.

6 'Full-time service' means service under a commitment entered into under the Reserve Forces Act 1996 s 24 (commitment to undertake a period of full-time service: see para 242 ante); Army Act 1955 s 211(9) (as added: see note 5 supra); Air Force Act 1955 s 210(9) (as added: see note 5 supra).

7 As to call out for home defence service see para 232 note 4 ante.

8 As to training see para 241 et seq ante.

9 Army Act 1955 s 211(1)(b) (as substituted: see note 4 supra); and see the Reserve Forces Act 1980 s 157(1), Sch 8 para 11(b)(i) (prospectively repealed by the Reserve Forces Act 1996 s 131(2), Sch 11). At the date at which this volume states the law no day had been appointed for the repeal of the provisions of the Reserve Forces Act 1980 to take effect. As to when the officers of the Territorial Army are subject to military law see the Army Act 1955 s 205(1)(e) (as substituted), s 205(1)(ea) (as added); and para 307 ante.

10 As to the exceptions and modifications see the Air Force Act 1955 s 210(4) (as substituted and amended), s 210(4A) (as added), s 210(6) (as substituted), s 210(7) (as amended); and paras 247, 250 ante.

11 *le ibid* Pt II (ss 24-143) (as amended), Pt III (ss 144-153) (as amended), Pt IV (ss 154-176) (as amended), Pt V (ss 177-204A) (as amended): see s 210(1). These provisions are subject to exceptions: see note 10 supra. In addition, s 17(4) (relating to forfeiture of service for desertion: see para 199 ante) applies to warrant officers, non-commissioned officers and men of the Air Force Reserve and the Royal Auxiliary Air Force as if the references to forfeited service were references to a period of permanent service or, as the case may be, of service as a member of the force concerned, which is to be disregarded under the Reserve Forces Act 1996 s 98(6): Air Force Act 1955 s 210(2) (substituted by the Reserve Forces Act 1996 s 131(1), Sch 10 para 11(1), (3)). As to the Reserve Forces Act 1996 s 98 see para 248 ante. As to the Air Force Reserve and the Royal Auxiliary Air Force see para 223 et seq ante.

12 As to when these categories of personnel are subject to military law see para 307 ante.

13 Air Force Act 1955 s 210(1)(b). The text refers to officers who have retired within the meaning of any order under the Air Force (Constitution) Act 1917 s 2: see para 9 ante.

14 Air Force Act 1955 s 210(1)(d).

15 *Ibid* s 210(1)(a) (s 210(1)(a), (c) substituted by the Reserve Forces Act 1996 Sch 10 para 11(2)).

16 Air Force Act 1955 s 210(1)(c) (as substituted: see note 15 supra). As to when the officers of the Air Force Reserve and the Royal Auxiliary Air Force are subject to air force law see s 205(1)(f) (as substituted), s 205(1)(ff) (as added); and para 308 ante.

17 See the Naval Discipline Act 1957 s 111 (as amended); and para 306 ante.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act

1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

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311. Application of certain provisions of the service discipline Acts to civilians.

Where any body of Her Majesty's naval forces¹, regular forces², or regular air force³ is on active service⁴, the provisions of the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, as the case may be, relating to discipline, arrest and the trial and punishment of offences⁵, apply (subject to certain modifications⁶) to civilians not otherwise subject to service law, who are within the following categories⁷:

- 89 (1) those employed in the service of that body of those forces⁸;
- 90 (2) those employed in the service of any part or member of that body of those forces⁹; and
- 91 (3) those who accompany that body of those forces or any part of them¹⁰.

A limited number of the offence-creating provisions of the three service discipline Acts¹¹ and their provisions as to arrest and the trial and punishment of offences¹², apply¹³ (subject to certain modifications) at all times to civilians within specified categories¹⁴ who are within the limits of the command of any officer commanding any of Her Majesty's naval forces, or a body of the regular forces or of the regular air force, as the case may be, outside the United Kingdom, and who are not otherwise subject to service law¹⁵.

Each of the service discipline Acts provides for the application (to such extent, and subject to such modifications, as may be prescribed by Defence Council regulations) of their provisions as to discipline and the arrest, trial and punishment of offenders to persons not otherwise subject to service law, who are embarked as passengers on board any of Her Majesty's ships¹⁶ vessels¹⁷ or aircraft¹⁸.

1 Except where otherwise provided 'Her Majesty's naval forces' does not include Commonwealth forces: see para 20 ante. As to the meaning of 'Commonwealth forces' see para 20 note 6 ante.

2 For the meaning of 'regular forces' see para 191 ante.

3 For the meaning of 'regular air force' see para 206 ante.

4 For the meaning of 'on active service' see para 305 ante.

5 I.e. the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended). These comprise the offence-creating provisions and those relating to arrest and the trial and punishment of offenders.

6 As to the modifications relating to arrest, the circumstances where a civilian remains subject to service law, the investigation of charges and summary procedure, the composition of courts-martial, and the punishments which may be awarded to and orders which may be made against civilians, see the Army Act 1955 s 209(3) (as amended), s 209(3A) (as added), s 209(4) (as substituted), s 209(4A), (4B) (as added); the Air Force Act 1955 s 209(3) (as amended), s 209(3A) (as added), s 209(4) (as substituted), s 209(4A), (4B) (as added and amended); the Naval Discipline Act 1957 s 118(3), (3A) (as added and substituted), s 118(3B) (as added); and para 430 et seq post. As to the modifications relating to the standing civilian court established under the Armed Forces Act 1976 see the Army Act 1955 s 209(3B) (as added, renumbered and amended); the Air Force Act 1955 s 209(3B) (as added, renumbered and amended); and para 353 post. As to standing civilian courts see para 520 et seq post. Provision is made for service courts to impose sentences such as absolute or conditional discharges or community supervision orders on civilians: see the Army Act 1955 s 209(3) (as amended), Sch 5A (as added and amended; prospectively further amended); the Air Force Act 1955 s 209(3) (as

amended), Sch 5A (as added and amended; prospectively further amended); the Naval Discipline Act 1957 s 118(3), (3B) (as added), Sch 4 (as amended), Sch 4A (as added and amended; prospectively further amended); and paras 430, 432 et seq post. These sentences are not available for servicemen.

The following provisions relating to civilians subject to military or air force law are set out elsewhere in this title: (1) procedures for the investigation and summary disposal of charges (see paras 317 et seq, 348 et seq post); (2) the composition of courts-martial (see para 480 et seq post); (3) the duties of court-martial administration officers for convening courts-martial, the preparation of the defence and the appointment of officers and other persons to attend courts-martial under instruction (see para 488 et seq post); (4) the assembly of courts-martial and objections to members (see para 497 post); (5) procedure on a plea of guilty (see para 501 post); (6) the rights of petitioning enjoyed by a service parent or guardian of a juvenile civilian offender (see para 511 post). As to the punishments and orders which may be imposed on civilians subject to naval discipline see para 430 post.

7 See the Army Act 1955 s 209(1); the Air Force Act 1955 s 209(1); and the Naval Discipline Act 1957 s 118(1). These provisions apply only to persons who are not otherwise subject to service law (see the Army Act 1955 s 209(1); the Air Force Act 1955 s 209(1); and the Naval Discipline Act 1957 s 118(1), (4)), and do not apply to civilians embarked as passengers on board Her Majesty's ships or aircraft (not being persons who are otherwise subject to service law) by virtue of the Army Act 1955 s 208A (as added), the Air Force Act 1955 s 208A (as added) or the Naval Discipline Act 1957 s 117 (as amended) (see the text to notes 16-18 infra), as the case may be (see the Army Act 1955 s 209(5) (added by the Armed Forces Act 1971 s 72(2)); the Air Force Act 1955 s 209(5) (added by the Armed Forces Act 1971 s 72(2)); and the Naval Discipline Act 1957 s 118(4)).

The provisions of the Army Act 1955 s 199 (as amended), the Air Force Act 1955 s 199 (as amended), and the Naval Discipline Act 1957 s 129B (as added and amended), as the case may be (each of which relates to the proof of the outcome of a trial in a civil court: see para 387 post), apply to persons within the scope of these provisions: see the Army Act 1955 s 209(4B) (added by the Armed Forces Act 1976 s 22(5), Sch 9 para 7); the Air Force Act 1955 s 209(4B) (added by the Armed Forces Act 1976 Sch 9 para 7; and amended by the Armed Forces Act 1981 s 10, Sch 1 para 2); and the Naval Discipline Act 1957 s 118(3), Sch 4 para 5 (added by the Armed Forces Act 1976 Sch 9 para 14(b)).

8 See the Army Act 1955 s 209(1); the Air Force Act 1955 s 209(1); and the Naval Discipline Act 1957 s 118(1).

9 See the Army Act 1955 s 209(1); the Air Force Act 1955 s 209(1); and the Naval Discipline Act 1957 s 118(1).

10 See the Army Act 1955 s 209(1); the Air Force Act 1955 s 209(1); and the Naval Discipline Act 1957 s 118(1).

11 As to the service discipline Acts see para 302 ante.

12 In the Army Act 1955 Pt II (as amended); and the Air Force Act 1955 Pt II (as amended): see the Army Act 1955 s 209(2); and the Air Force Act 1955 s 209(2). The offence-creating provisions of the Naval Discipline Act 1957 for this purpose are: (1) s 14 (as amended) (see para 403 post), s 14A (as added) (see para 402 post), s 38 (as amended; prospectively further amended) (see para 411 post), s 39 (as amended) (see para 419 post); (2) s 40 (as amended) (see para 420 post), s 41 (as substituted) (see paras 414, 421 post) (so far as they relate to the provisions mentioned); (3) s 42 (as amended; prospectively further amended) (see para 422 post), s 43 (as substituted and amended) (see para 424 post); and (4) Pt II (as amended) (so far as it applies to an offence under any of these provisions): s 118(2) (amended by the Armed Forces Act 1971 s 43, Sch 1 para 2(1), (3)).

As from a day to be appointed, head (1) supra is amended so as to add the Naval Discipline Act 1957 s 12B (prospectively added) (see para 406 ante) to the list of the offence-creating provisions for this purpose: see s 118(2) (as so amended; prospectively further amended by the Armed Forces Act 2001 s 32(9), Sch 5 para 7(a)). At the date at which this volume states the law no such day had been appointed.

13 However, the provisions contained in the Army Act 1955 ss 24-69 (as amended) do not apply to a person by virtue only of s 209(2) (as amended) except s 29 (as substituted and amended) (see para 396 post), ss 35, 36 (both as amended) (see paras 402-403 post), ss 55-57 (as amended; prospectively further amended) (see paras 410-411 post), and s 68 (as amended) (see para 420 post) (so far as it relates to those provisions): s 209(2) proviso (amended by the Armed Forces Act 1971 s 43, Sch 1 para 1(1), (9)(a)).

As from a day to be appointed, the Army Act 1955 s 209(2) proviso is further amended to provide that the provisions contained in ss 24-69 (as amended) do not apply to a person by virtue only of s 209(2) (as amended) except: (1) s 29 (as substituted and amended), ss 35, 36 (both as amended), ss 55-57 (as amended; prospectively further amended), and s 68 (as amended) (so far as it relates to those provisions); and (2) in the case of persons falling within any description specified in Sch 5 paras 1-4 (as amended) (see note 14 infra), s 34B (prospectively added) (see para 406 post) and s 68 (as amended) (so far as it relates to that provision): s 209(2) proviso (prospectively amended by the Armed Forces Act 2001 Sch 5 para 4). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Army Act 1955 s 209(2) proviso (prospectively amended) is further amended to provide that the provisions contained in ss 24-69 (as amended) do not apply to a person by virtue only of s 209(2) (as amended; prospectively further amended) except: (a) s 29 (as substituted and amended), ss 35, 36 (both as amended), ss 55-57 (as amended; prospectively further amended), and s 68 (as amended) and s 68A (as added) (see paras 414, 421 post) (so far as they relate to those provisions); and (b) in the case of persons falling within any description specified in Sch 5 paras 1-4 (as amended), s 34B (as prospectively added) and s 68 (as amended) and s 68A (as added) (so far as they relate to that provision): s 209(2) proviso (prospectively amended by the Armed Forces Act 2001 s 34, Sch 5 para 4, Sch 6 para 50(1), (2)). At the date at which this volume states the law no such day had been appointed.

The provisions contained in the Air Force Act 1955 ss 24-69 (as amended) do not apply to a person by virtue only of s 209(2) (as amended) except s 29 (as substituted and amended) (see para 396 post), ss 35, 36 (both as amended) (see paras 402-403 post), ss 55-57 (as amended; prospectively further amended) (see paras 410-411 post), and s 68 (as amended) (see para 420 post) (so far as it relates to those provisions): s 209(2) proviso (amended by the Armed Forces Act 1971 Sch 1 para 1(1), (9)(a)).

As from a day to be appointed, the Air Force Act 1955 s 209(2) proviso is further amended to provide that the provisions contained in ss 24-69 (as amended) do not apply to a person by virtue only of s 209(2) (as amended) except: (i) s 29 (as substituted and amended), ss 35, 36 (both as amended), ss 55-57 (as amended; prospectively further amended), and s 68 (as amended) (so far as it relates to those provisions); and (ii) in the case of persons falling within any description specified in Sch 5 paras 1-4 (as amended) (see note 14 infra), s 34B (as prospectively added) (see para 406 post) and s 68 (as amended) (so far as it relates to that provision): s 209(2) proviso (prospectively amended by the Armed Forces Act 2001 Sch 5 para 4). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, the Air Force Act 1955 s 209(2) proviso (prospectively amended) is further amended to provide that the provisions contained in ss 24-69 (as amended) do not apply to a person by virtue only of s 209(2) (as amended and prospectively further amended) except: (A) s 29 (as substituted and amended), ss 35, 36 (both as amended), ss 55-57 (as amended; prospectively further amended), and s 68 (as amended) and s 68A (as added) (see paras 414, 421 post) (so far as they relate to those provisions); and (B) in the case of persons falling within any description specified in Sch 5 paras 1-4 (as amended), s 34B (as prospectively added) and s 68 (as amended) and s 68A (as added) (so far as they relate to that provision): s 209(2) proviso (prospectively amended by the Armed Forces Act 2001 Sch 5 para 4, Sch 6 para 50(1), (2)). At the date at which this volume states the law no such day had been appointed.

The Naval Discipline Act 1957 s 39 (as amended) (see para 419 post) does not apply to a person by virtue only of s 118(2) (as amended) except at a time when he is on board one of Her Majesty's ships: s 118(2) proviso (added by the Armed Forces Act 1971 s 42).

As from a day to be appointed, the Naval Discipline Act 1957 s 118(2) proviso (as added) is amended to provide that s 39 (as amended) does not apply to a person by virtue only of s 118(2) (as amended) except at a time when he is on board one of Her Majesty's ships and s 12B (prospectively added) (see para 406 post), and s 40 (as amended), s 41 (as substituted) (so far relating thereto), apply only to persons falling within any description specified in Sch 3 paras 1-4 (as amended) (see note 14 infra): s 118(2) proviso (as so added; prospectively amended by the Armed Forces Act 2001 Sch 5 para 7(b)). At the date at which this volume states the law no such day had been appointed.

14 The categories defined are:

- 30 (1) persons serving Her Majesty, or otherwise employed, in such capacities connected with Her Majesty's naval, military or air forces as may be specified for the purposes of the Army Act 1955 Sch 5 (as amended), the Air Force Act 1955 Sch 5 (as amended) or the Naval Discipline Act 1957 Sch 3 (as amended), as the case may be, by regulations of the Defence Council, being persons serving or employed under Her Majesty's government in the United Kingdom (Army Act 1955 Sch 5 para 1; Air Force Act 1955 Sch 5 para 1; Naval Discipline Act 1957 Sch 3 para 1 (all amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I));
- 31 (2) persons who are employed by, or in the service of, any naval, military or air force organisation so specified to which Her Majesty's government in the United Kingdom is a party and who are employed by or in the service of that organisation by reason of that government being a party to it (eg NATO) (Army Act 1955 Sch 5 para 2; Air Force Act 1955 Sch 5 para 2; Naval Discipline Act 1957 Sch 3 para 2);
- 32 (3) persons belonging to or employed by any other organisation so specified which operates in connection with Her Majesty's naval, military or air forces (eg NAAFI) (Army Act 1955 Sch 5 para 3; Air Force Act 1955 Sch 5 para 3; Naval Discipline Act 1957 Sch 3 para 3);
- 33 (4) persons who, for the purposes of their profession, business or employment, are attached to or accompany any of Her Majesty's naval, military or air forces in pursuance of an authorisation granted by or on behalf of the Defence Council or by an officer authorised by the Defence

Council (eg journalists) (Army Act 1955 Sch 5 para 4 (amended by the Armed Forces Act 2001 s 34, Sch 6 para 44; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I)); Air Force Act 1955 Sch 5 para 4 (amended by the Armed Forces Act 2001 Sch 6 para 44; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I)); Naval Discipline Act 1957 Sch 3 para 4 (amended by the Armed Forces Act 2001 Sch 6 para 45; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I));

- 34 (5) persons forming part of the family of members of any of Her Majesty's naval, military or air forces and residing with them or about to reside or departing after residing with them (Army Act 1955 Sch 5 para 5; Air Force Act 1955 Sch 5 para 5; Naval Discipline Act 1957 Sch 3 para 5);
- 35 (6) persons forming part of the family of persons falling within heads (1)-(4) supra and residing with them or about to reside or departing after residing with them (Army Act 1955 Sch 5 para 6; Air Force Act 1955 Sch 5 para 6; Naval Discipline Act 1957 Sch 3 para 6);
- 36 (7) persons employed by members of any of Her Majesty's naval, military or air forces (Army Act 1955 Sch 5 para 7; Air Force Act 1955 Sch 5 para 7; Naval Discipline Act 1957 Sch 3 para 7);
- 37 (8) persons employed by persons falling within heads (1)-(6) supra (Army Act 1955 Sch 5 para 8; Air Force Act 1955 Sch 5 para 8; Naval Discipline Act 1957 Sch 3 para 8);
- 38 (9) persons forming part of the family of persons falling within head (7) or head (8) supra and residing with them or about to reside or departing after residing with them (Army Act 1955 Sch 5 para 9; Air Force Act 1955 Sch 5 para 9; Naval Discipline Act 1957 Sch 3 para 9).

See further the Manual of Naval Law vol I Ch 1 art 0126 et seq, vol III App VII; the Queen's Regulations for the Army 1975 paras 6.082-6.083; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 paras 1135-1138. The category of persons present for the purpose of 'business' is designed in particular to catch civilian contractors. As to the Defence Council see para 2 ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

15 See the Army Act 1955 s 209(2), (5) (as added: see note 7 supra); the Air Force Act 1955 s 209(2), (5) (as added: see note 7 supra); and the Naval Discipline Act 1957 s 118(2), (4) (s 118(2) amended by the Armed Forces Act 1966 ss 34, 37(2), Sch 5). As to the proof of the outcome of a trial in a civil court see note 7 supra.

16 For the meaning of 'Her Majesty's ships' for the purposes of the Naval Discipline Act 1957 see para 6 note 3 ante. As to the meaning of 'Her Majesty's ships' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 21 note 13 ante.

17 'Her Majesty's vessels' is applicable only to the Naval Discipline Act 1957 s 117 (as amended) (see the text and note 18 infra). For the meaning of 'Her Majesty's vessels' see para 6 note 3 ante.

18 See the Army Act 1955 s 208A (added by the Armed Forces Act 1971 s 72(1)); the Air Force Act 1955 s 208A (added by the Armed Forces Act 1971 s 72(1)); and the Naval Discipline Act 1957 s 117 (amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 8; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). Regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work. For the meaning of 'Her Majesty's aircraft' for the purposes of the Naval Discipline Act 1957 see para 6 note 4 ante. As to the meaning of 'Her Majesty's aircraft' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 21 note 13 ante. See also note 7 supra.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve,

the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

311 Application of certain provisions of the service discipline Acts to civilians

TEXT AND NOTES--Only in very exceptional circumstances will the determination of criminal charges against civilians in military courts be compatible with the European Court of Human Rights art 6: Application 40426/98 *Martin v United Kingdom* [2006] All ER (D) 306 (Oct), ECtHR.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ii) Application of the Disciplinary Codes/312. Application of provisions of the service discipline Acts to Commonwealth forces.

312. Application of provisions of the service discipline Acts to Commonwealth forces.

The members of a naval, military or air force which is a Commonwealth force¹ are subject to naval discipline, military or air force law only to such extent, and subject to such adaptations and modifications, as may be provided by any enactment² relating to the attachment of members of such forces to Her Majesty's armed forces³.

Members of any of the armed forces of the Crown raised outside the United Kingdom⁴, or any armed forces other than armed forces of the Crown, which in either case have not been excepted by the Defence Council⁵, are subject to naval discipline when ordered to be trained or exercised on board any of Her Majesty's ships⁶ or in any of Her Majesty's naval establishments⁷. Orders in Council may direct that members of any naval force of a Commonwealth country are subject to naval discipline so far as it relates to the offences of desertion or absence without leave⁸, and to the arrest, custody, trial and punishment of persons who have committed or are suspected of having committed either of those offences⁹.

1 As to the meaning of 'Commonwealth force' see para 20 note 6 ante.

2 See the Visiting Forces (British Commonwealth) Act 1933 s 4 (as amended); paras 11, 255 ante; and COMMONWEALTH. This provision is applied to forces raised in Brunei or the Maldives (see the Brunei and Maldives Act 1985 s 1, Sch 5 para 5), Pakistan (see the Pakistan Act 1990 s 1, Schedule para 4), Namibia (see the Namibia Act 1991 s 1, Schedule para 3), South Africa (see the South Africa Act 1995 s 1, Schedule para 4), and Cameroon and Mozambique (see the Commonwealth Act 2002 s 2, Sch 2 para 2).

3 See the Army Act 1955 s 206; the Air Force Act 1955 s 206; and the Naval Discipline Act 1957 s 114(1). Section 114(1) is expressed to be without prejudice to s 111(6) (as amended) (see para 306 ante), and adds to the definition of the extent to which the members of such a force may be subject to that Act the words 'or as may be provided by the law of that country' (ie the country of origin of the force in question). Where members of a force of any Commonwealth country are subject to the Naval Discipline Act 1957 by virtue of the law of that country, Her Majesty may by Order in Council make such adaptations and modifications of the Naval Discipline Act 1957 in relation to other members of Her Majesty's naval forces as may be desirable for the purpose of regulating the relations between those members of Her Majesty's naval forces and members of the force of that country: s 114(2). For the meaning of 'Her Majesty's naval forces' see para 7 ante.

4 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 As to the Defence Council see para 2 ante.

6 For the meaning of 'Her Majesty's ships' see para 6 note 3 ante.

7 Naval Discipline Act 1957 s 111(6) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See further paras 306 ante, 313 post. For the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante. It is submitted that the words 'any of the armed forces of the Crown raised outside the United Kingdom, or any armed forces other than armed forces of the Crown' include the armed forces of any Commonwealth country. The countries exempted from this provision do not include any Commonwealth countries: see the Manual of Naval Law vol I Ch 1 art 0118, vol III App VII.

8 As to the offences of desertion and absence without leave see para 404 post.

9 Naval Discipline Act 1957 s 116(1) (amended by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 10). The Naval Discipline Act 1957 s 116(1) (as amended) is expressed to be without prejudice to ss 111-115 (as amended): see paras 306, 309 ante, 313 post. Where any Order in Council is so made in relation to members of a naval force, references in s 47 (as amended) (see para 378 post) and in Pt III (ss 93-110) (as

amended) to Her Majesty's naval forces include references to that force: s 116(2). The Naval Discipline (Commonwealth Navies) Order 1959, SI 1959/1972 (amended by SI 1961/1828) has been made under the Naval Discipline Act 1957 s 116(1) (as amended), and specifies the Commonwealth naval forces subject to the Naval Discipline Act 1957 so far as it relates to the offences of desertion and absence without leave.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ii) Application of the Disciplinary Codes/313. Application of provisions of the service discipline Acts to colonial forces.

313. Application of provisions of the service discipline Acts to colonial forces.

Where any military or air force is raised under the law of a colony¹, then in relation to that force and its members of any rank² any such law³: (1) may make provision so as to have effect both when they are outside and when they are within the limits of the colony⁴; and (2) may apply all or any of the provisions of the Army Act 1955 or the Air Force Act 1955, as the case may be, with or without any adaptations, modifications or exceptions⁵. Where any such force is serving with part of the regular forces⁶ or the regular air force⁷, as the case may be, or with any of their reserve or auxiliary forces⁸, the Army Act 1955 or the Air Force Act 1955 applies⁹: (a) to its officers as it applies to officers holding land force or air force commissions¹⁰; and (b) to its warrant officers, non-commissioned officers and soldiers or airmen as it applies to personnel of those ranks in the regular forces and air force¹¹, but only in so far as the law of the colony does not provide for the government and discipline of the force and its members, and in any case subject to such adaptations, modifications or exceptions as may be specified in the general orders of the officer¹², whether naval, military or air force, commanding the force with which the colonial force is serving¹³. While any member, of whatever rank, of a force raised under the law of a colony is attached to, doing duty with, or otherwise acting as part of or with any portion of, the regular forces, the regular air force or any of their reserve or auxiliary forces outside the colony in question, the above provisions do not apply in relation to him, but he is subject to military or air force law, and the Army Act 1955 or the Air Force Act 1955 applies to him as if he were a member of the regular forces or of the regular air force, as the case may be¹⁴.

Members of a force raised for the naval defence of a colony¹⁵ are subject to naval discipline, but only to such extent and subject to such adaptations and modifications as may be provided by the legislature of that colony¹⁶, except while any officer or rating of such a force is placed at the disposal of Her Majesty for general service in the Royal Navy¹⁷, during which period he is subject to naval discipline to its full extent¹⁸. Furthermore, members of any of the armed forces of the Crown raised outside the United Kingdom¹⁹, or any armed forces other than armed forces of the Crown, which in either case have not been excepted by the Defence Council²⁰, are subject to naval discipline when ordered to be trained or exercised on board any of Her Majesty's ships²¹ or in any of Her Majesty's naval establishments²². Orders in Council may direct that members of any naval force raised by any colony are subject to naval discipline so far as it relates to the offences of desertion or absence without leave²³, and to the arrest, custody, trial and punishment of persons who have committed or are suspected of having committed either of those offences²⁴.

The provisions described above apply to forces and to members of forces raised in any protectorate, or territory administered by Her Majesty's United Kingdom government under the trusteeship system of the United Nations²⁵.

1 As to the meaning of 'colony' see para 20 note 4 ante.

2 I.e. the officers, warrant officers, non-commissioned officers, soldiers and airmen.

3 See the Army Act 1955 s 207(1); and the Air Force Act 1955 s 207(1). The legislature of a colony is empowered to provide by its own law for the discipline of its forces and their members, even when they are serving outside the colony, subject to what is stated in the text and notes 4-14 infra.

4 See the Army Act 1955 s 207(1)(a); and the Air Force Act 1955 s 207(1)(a).

- 5 See the Army Act 1955 s 207(1)(b); and the Air Force Act 1955 s 207(1)(b).
- 6 For the meaning of 'regular forces' see para 191 ante.
- 7 For the meaning of 'regular air force' see para 206 ante.
- 8 Ie the Army Reserve, the Territorial Army, the Air Force Reserve or the Royal Auxiliary Air Force: see para 223 et seq ante.
- 9 See the Army Act 1955 s 207(2); and the Air Force Act 1955 s 207(2).
- 10 Army Act 1955 s 207(2)(a); Air Force Act 1955 s 207(2)(a).
- 11 See the Army Act 1955 s 207(2)(b); and the Air Force Act 1955 s 207(2)(b).
- 12 Ie the officer of rank not lower than colonel, or of corresponding rank in the navy or air force. As to corresponding ranks see para 1 note 7 ante.
- 13 See the Army Act 1955 s 207(2); and the Air Force Act 1955 s 207(2).
- 14 See the Army Act 1955 s 207(3); and the Air Force Act 1955 s 207(3) (both amended by the Army and Air Force Act 1961 s 35).
- 15 Ie in pursuance of the Colonial Naval Defence Act 1931 s 1.
- 16 Ie pursuant to ibid s 2(1) (as amended).
- 17 Ie under ibid s 2(2) (as amended).
- 18 See the Naval Discipline Act 1957 s 115(1), (2).
- 19 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.
- 20 As to the Defence Council see para 2 ante.
- 21 For the meaning of 'Her Majesty's ships' see para 6 note 3 ante.
- 22 Naval Discipline Act 1957 s 111(6) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See further paras 306, 312 ante. For the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante. No such exceptions in respect of colonies have been made: see the Manual of Naval Law vol I Ch 1 art 0119, vol III App VII.
- 23 As to the offences of desertion and absence without leave see para 404 post.
- 24 Naval Discipline Act 1957 s 116(1) (amended by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 10). The Naval Discipline Act 1957 s 116(1) (as amended) is expressed to be without prejudice to ss 111-115 (as amended): see paras 306, 309, 312 ante. Where any Order in Council is so made in relation to members of a naval force, references in s 47 (as amended) (see para 378 post) and in Pt III (ss 93-110) (as amended) to Her Majesty's naval forces include references to that force: s 116(2). The Naval Discipline (Colonial Naval Forces) Order 1959, SI 1959/867, was made under the Naval Discipline Act 1957 s 116(1) (as amended) and specifies the colonial naval forces subject to the Naval Discipline Act 1957 so far as it relates to the offences of desertion and absence without leave.
- 25 See the Army Act 1955 s 217(1); the Air Force Act 1955 s 215(1); and the Naval Discipline Act 1957 s 127(1)(a), (b). Note that there are no longer any protectorates or trust territories. See further para 20 ante.

UPDATE

306-313 Application of the Disciplinary Codes

The following persons are subject to service law under the Armed Forces Act 2006 (see PARA 12-26). Every member of the regular forces (see PARA 191) is subject to service law at all times: Armed Forces Act 2006 s 367(1). Every member of the reserve forces is subject to service law while (1) in permanent service on call-out under any provision

of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 or under any other call-out obligation of an officer; (2) in home defence service on call-out under the Reserve Forces Act 1980 s 22; (3) in full-time service under a commitment entered into under the Reserve Forces Act 1996 s 24; (4) undertaking any training or duty (whether or not in pursuance of an obligation); or (5) serving on the permanent staff of a reserve force: Armed Forces Act 2006 s 367(2). 'The reserve forces' means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to 'a reserve force' are to be read accordingly: s 374.

The following provisions apply for the purposes of the Armed Forces Act 2006: s 368(1). A person recalled to service under any provision of the Reserve Forces Act 1980 or the Reserve Forces Act 1996, or any other recall obligation of an officer, is to be regarded as being a member of the regular forces from acceptance into service to release or discharge: s 368(2). Subject to s 368(2), an officer who is not on the active list is not to be regarded as being a member of the regular forces: s 368(3). For these purposes, an officer is on the active list if (and only if) any of the following provides that an officer of his description is on such a list: (1) Queen's Regulations; (2) Royal Warrant; (3) an order under the Air Force (Constitution) Act 1917 s 2 (see PARA 9): Armed Forces Act 2006 s 368(4). 'Officer' includes a midshipman: s 374.

When a member of a British overseas territory force undertakes any duty or training with a regular or reserve force he becomes subject to service law as if he were a member of that force of an equivalent rank or rate: see s 369(1), (2). The Secretary of State may make orders that modify any of the Act's provisions with respect to members of a British overseas territory force who fall or have fallen within this provision: see s 369(3). For these purposes 'British overseas territory force' means any of Her Majesty's forces that is raised under the law of a British overseas territory: s 369(4). 'Her Majesty's forces' does not include any Commonwealth force: s 374.

313 Application of provisions of the service discipline Acts to colonial forces

NOTE 15--Colonial Naval Defence Act 1931 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (iii) Redress of Complaints/314. Redress of complaints.

(iii) Redress of Complaints

314. Redress of complaints.

A person subject to naval discipline, military or air force law¹ who thinks himself wronged in any matter relating to his service² is entitled to make a complaint with respect to that matter to the prescribed officer³. This remedy also applies to a person who is not subject to naval discipline, military or air force law, in relation to any matter which took place while he was so subject⁴. The redress of complaint procedure is not designed to deal with formal disciplinary proceedings. A person may not make a complaint with respect to a matter against which he may present a petition against a finding or sentence of a court-martial⁵, ask for a review of summary findings and awards⁶, or bring an appeal under the Courts-Martial (Appeals) Act 1968⁷.

The procedure for making and dealing with a complaint is laid down in the Queen's Regulations, which may, in particular, provide⁸:

- 92 (1) for a complaint not to be made after the end of such period as may be prescribed⁹;
- 93 (2) for any such period to be extended, in the case of a complaint made after the end of the period, in such circumstances as may be prescribed¹⁰;
- 94 (3) for a complaint to be referred, for its first consideration, by the officer to whom it was made to a superior officer¹¹; and
- 95 (4) if the complainant does not obtain the redress to which he thinks he is entitled (whether from the officer who first considered the complaint or from a superior officer), for the complaint to be referred to, and considered by, a superior officer¹².

An officer to whom a complaint is made or referred may grant any redress which appears to him necessary¹³.

If the complainant does not obtain the redress to which he thinks he is entitled by the redress of complaint procedure, he may submit his complaint to the Defence Council¹⁴ in accordance with the procedure laid down in the Queen's Regulations¹⁵, and the Defence Council must have any complaint so submitted investigated and may grant any redress which appears to it to be necessary¹⁶. Once the matter has been referred to the Defence Council there is no further redress unless the complainant is an officer¹⁷. Where a complaint by an officer has been submitted to the Defence Council and he does not obtain the redress to which he thinks he is entitled, the Defence Council must, at his request, make a report on the complaint through the Secretary of State¹⁸ to Her Majesty in order to receive the directions of Her Majesty on it¹⁹.

Before a person can bring a matter before an employment tribunal alleging unequal pay, sex discrimination or racial discrimination, or concerning working time, he must first seek redress under the provisions described above²⁰. As a forum of last resort dealing with the individual's statutory rights, the Defence Council must achieve a high standard of fairness when considering a complaint of racial discrimination²¹.

1 As to the persons subject to naval discipline, military or air force law see para 306 et seq ante.

2 As to the non-application of specified provisions of the Army Act 1955 and the Air Force Act 1955 relating to deductions from pay for the maintenance of dependants and for judgment debts see para 309 ante.

3 Army Act 1955 s 180(1) (s 180 substituted by the Armed Forces Act 1996 s 20(1)); Air Force Act 1955 s 180(1) (s 180 substituted by the Armed Forces Act 1996 s 20(2)); Naval Discipline Act 1957 s 130(1) (s 130 substituted by the Armed Forces Act 1996 s 20(3)). The prescribed officer is the officer prescribed by the Queen's Regulations (see the Queen's Regulations for the Army 1975 paras J5.204-J5.206; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1000; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 42 para J4204); Army Act 1955 s 180(10) (as so substituted); Air Force Act 1955 s 180(10) (as so substituted); Naval Discipline Act 1957 s 130(10) (as so substituted). For the meaning of 'officer' for the purposes of the Naval Discipline Act 1957 see para 152 ante.

4 Army Act 1955 s 180(9) (as substituted: see note 3 supra); Air Force Act 1955 s 180(9) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(9) (as substituted: see note 3 supra).

5 le under the Army Act 1955 s 113 (as substituted and amended), the Air Force Act 1955 s 113 (as substituted and amended), or the Naval Discipline Act 1957 s 70 (as substituted and amended): see paras 473, 511-512 post.

See Application 38784/97 *Morris v United Kingdom* [2002] ECHR 38784/97, 34 EHRR 1253, where the European Court of Human Rights held that the review of a decision of a court-martial by a non-judicial authority was contrary to the notion of a court-martial's independence required by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134). The reasoning in *Morris v United Kingdom* supra was rejected in *R v Spear* [2002] UKHL 31, [2003] 1 AC 734, [2002] 3 All ER 1074, on the grounds that post-trial review involving only a reduction in sentence or the quashing of a conviction did not undermine the independence or impartiality of the court-martial.

6 le under the Army Act 1955 s 115 (as substituted and amended), the Air Force Act 1955 s 115 (as substituted and amended), or the Naval Discipline Act 1957 s 71B (as added and amended): see paras 352, 358 post.

Where before 2 October 2000: (1) a charge has been dealt with summarily; and (2) the commanding officer or appropriate superior authority has recorded a finding that the charge has been proved and has awarded punishment accordingly, the Army Act 1955 and the Air Force Act 1955 continue to apply in relation to that finding or punishment without the amendments made by the Armed Forces Discipline Act 2000 ss 14-25, Sch 3 (which confer a right of appeal to the summary appeal court and make provision which is consequential on that right): see the Armed Forces Discipline Act 2000 (Commencement and Transitional Provisions) Order 2000, SI 2000/2366, arts 1-3, Schedule paras 13-14. Similarly, where before 2 October 2000: (a) a charge has been tried summarily; and (b) the commanding officer has recorded a finding of guilt and has awarded punishment accordingly, the Naval Discipline Act 1957 continues to apply in relation to that finding or punishment without the amendments made by the Armed Forces Discipline Act 2000 ss 14-25, Sch 3: see the Armed Forces Discipline Act 2000 (Commencement and Transitional Provisions) Order 2000, SI 2000/2366, Schedule para 15. As to appeals to the summary appeal court see para 359 et seq post.

7 Army Act 1955 s 180(2) (s 180 as substituted: see note 3 supra); Air Force Act 1955 s 180(2) (s 180 as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(2) (s 130 as substituted: see note 3 supra). As to courts-martial appeals see para 529 et seq post.

As from a day to be appointed, the Army Act 1955 s 180(2) (as substituted), the Air Force Act 1955 s 180(2) (as substituted), and the Naval Discipline Act 1957 s 130(2) (as substituted) are further substituted to provide that a person ('the person aggrieved') may not make a complaint with respect to: (1) any decision of a judicial officer or judge advocate under the Army Act 1955 s 75C (as added) (extension of custody without charge: see para 341 post), s 75F (as added) (custody after charge: see para 343 post), s 75G (as added) (review of custody after charge: see para 344 post), s 75H (as added; prospectively amended) (custody during court-martial proceedings: see para 344 post), s 75J (as added; prospectively amended) (release from custody after charge or during proceedings: see para 345 post), s 75K (as added; prospectively amended) (arrest during proceedings: see para 346 post), the Air Force Act 1955 s 75C (as added), s 75F (as added), s 75G (as added), s 75H (as added; prospectively amended), s 75J (as added; prospectively amended), s 75K (as added; prospectively amended), or the Naval Discipline Act 1957 s 47D (as added), s 47G (as added), s 47H (as added), s 47J (as added; prospectively amended), s 47K (as added; prospectively amended), s 47L (as added; prospectively amended); (2) any decision of a judicial officer under the Armed Forces Act 2001 Pt 2 (ss 2-16) (powers of entry, search and seizure: see paras 330-334 post); (3) any matter against which the person aggrieved may present a petition under the Army Act 1955 s 113 (as substituted and amended), the Air Force Act 1955 s 113 (as substituted and amended), or the Naval Discipline Act 1957 s 70 (as substituted and amended) (review of findings and sentences of court-martial: see paras 473, 511-512 post); or (4) any matter against which the person aggrieved may bring an appeal under: (a) the Army Act 1955 s 83ZE (as added), the Air Force Act 1955 s 83ZE (as added), or the Naval Discipline Act 1957 s 52FK (as added) (right of appeal: see paras 360, 366

post); or (b) the Courts-Martial (Appeals) Act 1968 (see para 529 et seq post): Army Act 1955 s 180(2) (s 180 as so substituted; s 180(2) prospectively substituted by the Armed Forces Act 2001 s 34, Sch 6 para 41); Air Force Act 1955 s 180(2) (s 180 as so substituted; s 180(2) prospectively substituted by the Armed Forces Act 2001 Sch 6 para 41); Naval Discipline Act 1957 s 130(2) (s 130 as so substituted; s 130(2) prospectively substituted by the Armed Forces Act 2001 Sch 6 para 42). At the date at which this volume states the law no such day had been appointed. As to judge advocates see para 484 post.

8 Army Act 1955 s 180(3) (as substituted: see note 3 supra); Air Force Act 1955 s 180(3) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(3) (as substituted: see note 3 supra).

9 Army Act 1955 s 180(3)(a) (s 180 as substituted: see note 3 supra); Air Force Act 1955 s 180(3)(a) (s 180 as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(3)(a) (s 130 as substituted: see note 3 supra). Any period prescribed for the purposes mentioned in head (1) in the text must not be less than three months beginning with the day on which the matter complained of occurred: Army Act 1955 s 180(4) (as so substituted); Air Force Act 1955 s 180(4) (as so substituted); Naval Discipline Act 1957 s 130(4) (as so substituted). The prescribed period is three months: see the Queen's Regulations for the Army 1975 para J5.204; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1000; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 42 para J4204.

10 Army Act 1955 s 180(3)(b) (as substituted: see note 3 supra); Air Force Act 1955 s 180(3)(b) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(3)(b) (as substituted: see note 3 supra). Complaints may be received out of time if it is judged that it was not reasonably practical for the complaint to be submitted in time: see the Queen's Regulations for the Army 1975 para J5.204; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1000; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 42 para J4204. However, any act extending over a period should be treated as having been done at the end of that period for the purposes of calculating the period for submission of a complaint: see the Queen's Regulations for the Army 1975 para J5.204; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 42 para J4204.

11 Army Act 1955 s 180(3)(c) (as substituted: see note 3 supra); Air Force Act 1955 s 180(3)(c) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(3)(c) (as substituted: see note 3 supra). For the meaning of 'superior officer' see para 400 note 4 post. Complaints must be made in writing and submitted to the complainant's commanding officer. However, if the commanding officer is the subject of the complaint, or was alleged to be implicated in any way in the matter complained of, the complaint must be submitted direct to the next level in the chain of command. The complainant must be allowed to see all documents relevant to his complaint other than those whose disclosure would cause serious harm to the public interest and legal advice, which would ordinarily be privileged. The relevant board may decide to hold a hearing. The complainant may make a request for such a hearing. At the hearing the board and the complainant will have the opportunity to question any witnesses called. The complainant may, at the discretion of the board, be accompanied by a legal or other adviser at the hearing: see the Queen's Regulations for the Army 1975 para J5.204; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1000; and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 42 para J4204.

12 Army Act 1955 s 180(3)(d) (as substituted: see note 3 supra); Air Force Act 1955 s 180(3)(d) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(3)(d) (as substituted: see note 3 supra).

13 Army Act 1955 s 180(5) (as substituted: see note 3 supra); Air Force Act 1955 s 180(5) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(5) (as substituted: see note 3 supra).

14 As to the Defence Council see para 2 ante.

15 Army Act 1955 s 180(6) (as substituted: see note 3 supra); Air Force Act 1955 s 180(6) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(6) (as substituted: see note 3 supra).

16 Army Act 1955 s 180(7) (as substituted: see note 3 supra); Air Force Act 1955 s 180(7) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(7) (as substituted: see note 3 supra).

17 See the text to note 19 infra.

18 As to the Secretary of State see para 2 ante.

19 Army Act 1955 s 180(8) (as substituted: see note 3 supra); Air Force Act 1955 s 180(8) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 130(8) (as substituted: see note 3 supra). This procedure cannot be used in respect of a conviction or sentence at court-martial or any summary award: see the text and notes 5-7 supra.

20 See the Equal Pay Act 1970 s 7A (as added and amended); the Sex Discrimination Act 1975 s 85 (as amended); the Race Relations Act 1976 s 75 (as amended); the Working Time Regulations 1998, SI 1998/1833,

regs 37, 38; and DISCRIMINATION vol 13 (2007 Reissue) paras 375, 432, 457; EMPLOYMENT vol 39 (2009) PARAS 248-249.

Regulations specify the circumstances in which a person may present a complaint to an employment tribunal (see DISCRIMINATION vol 13 (2007 Reissue) paras 414, 499) in respect of his service in the armed forces, notwithstanding that he would otherwise be precluded from making such a complaint: see the Race Relations (Complaints to Employment Tribunals) (Armed Forces) Regulations 1997, SI 1997/2161 (as amended); the Equal Pay (Complaints to Employment Tribunals) (Armed Forces) Regulations 1997, SI 1997/2162 (as amended); the Sex Discrimination (Complaints to Employment Tribunals) (Armed Forces) Regulations, 1997, SI 1997/2163 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) paras 375, 432, 457.

21 *R v Army Board of Defence Council, ex p Anderson* [1992] QB 169, [1991] 3 All ER 375 (where it was held that there had to be a proper hearing of the complaint with members of the board meeting to consider all the relevant evidence and contentions, and that the complainant should be shown all the material seen by the board and be given an opportunity to respond to it).

UPDATE

314 Redress of complaints

TEXT AND NOTES--Army Act 1955, Air Force Act 1955, and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. If a person subject to service law (see PARA 306-313) thinks himself wronged in any matter relating to his service, or a person who has ceased to be subject to service law thinks himself wronged in any such matter which occurred while he was so subject, he may now make a complaint about the matter under the Armed Forces Act 2006 s 334 (a 'service complaint'): s 334(1). But a person may not make a service complaint about a matter of a description specified in regulations made by the Secretary of State: s 334(2). As to the matters so specified, see the Armed Forces (Redress of Individual Grievances) Regulations 2007, SI 2007/3353, regs 3, 4, Sch 1. The Defence Council (see PARA 2) must by regulations make provision with respect to the procedure for making and dealing with service complaints: Armed Forces Act 2006 s 334(3). The regulations must in particular make provision requiring (1) a service complaint to be made to an officer of a prescribed description; (2) the officer to whom a service complaint is made to decide whether to consider the complaint himself or to refer it to a superior officer of a prescribed description or to the Defence Council; (3) a service complaint considered by the officer to whom the complaint is made to be referred, on the application of the complainant, to a superior officer of a prescribed description or (if the officer considers it appropriate) to the Defence Council; (4) a superior officer to whom a service complaint is referred by virtue of heads (2) or (3) to decide whether to consider the complaint himself or to refer it to the Defence Council; (5) a service complaint considered by a superior officer to whom the complaint is referred by virtue of heads (2) or (3) to be referred, on the application of the complainant, to the Defence Council: s 334(4). Without prejudice to the generality of s 334(3), (4), the regulations may also make provision as to the way in which a service complaint is to be made (including provision as to the information to be provided by the complainant), and may provide that a service complaint, or an application of a kind mentioned in heads (3) or (5), may not be made, except in prescribed circumstances, after the end of a prescribed period: s 334(5). A period so prescribed must not be less than three months beginning with the day on which the matter complained of occurred: s 334(6). If, under provision made by virtue of s 334(3), (4), an officer decides to consider a service complaint himself, or a service complaint is referred to the Defence Council, the officer or the Defence Council ('the appropriate person') must decide whether the complaint is well-founded: s 334(7). If the appropriate person decides that the complaint is well-founded, he must decide what redress, if any, within his authority, would be appropriate, and grant any such redress: s 334(8). For these purposes 'prescribed' means prescribed by regulations made by the Defence Council: s 334(9).

The Defence Council may delegate all or some of its responsibilities under s 334 to a panel, referred to as a 'service complaint panel': see s 335. As to the composition and procedure of service complaint panels, see s 336 and the Armed Forces (Redress of Individual Grievances) Regulations 2007, SI 2007/3353. If (a) a service complaint is made about a matter by an officer, or a person who was an officer at the time the matter occurred; (b) a decision on the complaint is taken by the Defence Council under the Armed Forces Act 2006 s 334, and the Defence Council's function of taking that decision is not delegated to a service complaint panel to any extent; and (c) the complainant makes an application to the Defence Council stating why, in his view he should be given redress, or he should be given different or additional redress, the Defence Council must make a report on the complaint to Her Majesty, in order to receive the directions of Her Majesty on the complaint: see s 337.

There is to be a Service Complaints Commissioner, appointed by the Secretary of State: see s 366(1), (2). The Commissioner must not be a member of the armed forces or the civil service, is subject to terms of appointment and does not have Crown status: see s 366(3)-(5).

Where the Service Complaints Commissioner considers that any communication made to him contains an allegation that a person named in such a communication is subject to service law and has been wronged in a prescribed way, or was wronged in such a way while he was so subject, the Commissioner may refer the allegation to the officer whom he considers to be the relevant officer: s 338(1), (2). If the allegation is so referred, the officer to whom it is referred must as soon as is reasonably practicable (i) inform the person that the allegation has been so referred; (ii) ensure that the person is aware of the procedure for making a service complaint, and the effect on the making of service complaints of any regulations made by virtue of s 334(5) relating to the time limits for service complaints; and (iii) ascertain whether he wishes to make a service complaint in respect of the alleged wrong: s 338(3). Regulations made by the Secretary of State must provide that where the allegation is referred under s 338(2), the prescribed person must within the prescribed period notify the Commissioner of prescribed matters: s 338(4). For these purposes 'prescribed' means prescribed by regulations made by the Secretary of State; 'relevant officer' means the officer to whom a service complaint made by the person in respect of the alleged wrong is (under regulations made under s 334) to be made; and 'service complaint' has the same meaning as in s 334: s 338(5). In exercise of the powers conferred on him by s 338(1), (4) and (5), the Secretary of State has made the Armed Forces (Service Complaints Commissioner) Regulations 2007, SI 2007/3352, which provide that a person has been wronged in a prescribed way if he has been the subject of discrimination, harassment, bullying or dishonest, improper or biased behaviour (see reg 2(1)). For these purposes 'discrimination' means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment as a part-time employee: reg 2(2). Where, in accordance with the Armed Forces Act 2006 s 338(2), the Commissioner refers an allegation that a person has been wronged, the relevant officer must within 21 days notify the Commissioner of the occurrence of any of the following events (A) that he has informed the person that the allegation has been referred; (B) that the person has been made aware of the matters referred to in head (ii) above; (C) of the decision of the person whether he wishes to make a service complaint in respect of the alleged wrong; (D) that a service complaint which the person wishes to make in respect of the alleged wrong may not be made because of the expiry of a period prescribed under s 334(5), and that the person has been informed of this; (E) that a service complaint which the person wishes to make in respect of the alleged wrong may not be made because it is about a matter of a description prescribed by regulations made under s

334(2), and that the person has been informed of this; (F) of the withdrawal of a service complaint made in respect of the alleged wrong; (G) of a referral of a service complaint in respect of the alleged wrong to a superior officer or to the Defence Council pursuant to regulations made under s 334(4); (H) of a decision under s 334(7) whether the service complaint is well-founded; and (I) of a decision under s 334(8) in relation to redress: SI 2007/3352 reg 3.

The Commissioner must provide the Secretary of State with an annual report on the efficiency, effectiveness and fairness of the redress system, the exercise by him of his own function under the Armed Forces Act s 338 of referring allegations and any related matters that he considers appropriate or the Secretary of State directs: see s 339.

NOTE 7--Day appointed for purposes of 2001 Act Sch 6 paras 41, 42: SI 2003/2268.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(iv) The Prosecuting Authorities/315. The army prosecuting authority and the air force prosecuting authority.

(iv) The Prosecuting Authorities

315. The army prosecuting authority and the air force prosecuting authority.

Her Majesty has appointed a qualified officer¹ belonging to the military forces as the prosecuting authority for the army and has made a similar appointment for the air force². The Sovereign makes the appointment rather than the Army or Air Force Board or the Defence Council³ to emphasise the independence of the prosecuting authority from the chain of command. These officers are answerable to the Attorney General⁴ and through him to Parliament. Each of these officers has a staff of legally qualified prosecuting officers⁵ to assist him in carrying out his functions and to whom he may delegate any of those functions⁶. The main functions of the prosecuting authority are to examine the evidence, decide what charges the accused should face, if necessary request further evidence from the police, and generally prepare the case for court and prosecute it for trial at court-martial⁷, the summary appeal court⁸ or the standing civilian court⁹.

Where a case is referred to the prosecuting authority as a result of an election for court-martial trial and the election is withdrawn with leave, if the accused is an officer, warrant officer or a civilian¹⁰ the prosecuting authority must refer the case to the appropriate superior authority¹¹, to deal with the preliminary charge, that is to say the charge which the accused faced when he made his election¹².

Where the charge has been referred to the prosecuting authority by higher authority other than because of an election for trial, if the prosecuting authority considers that court-martial proceedings should be instituted, the prosecuting authority must determine the charge or charges on which the accused is to be tried and whether the trial is to be by general court-martial or district court-martial¹³. The prosecuting authority can refer any charge he deems appropriate for trial by court-martial¹⁴, save that where the accused has elected for trial by court-martial and the prosecuting authority considers that a different charge from the preliminary charge or an additional charge should be preferred, the prosecuting authority may refer the case back to the accused's commanding officer¹⁵. Where the charge is referred back to the commanding officer he must investigate it¹⁶.

Where a case has been referred to the prosecuting authority other than as the result of an election for court-martial trial and the prosecuting authority does not determine any charge to be preferred in respect of the case, or part of it, or before the commencement of the trial he discontinues any charge, and the accused is below the rank of colonel in the army or group captain in the air force, the prosecuting authority may refer the case, or the part concerned, back to the commanding officer of the accused who will investigate the charges afresh¹⁷.

Each prosecuting authority has the conduct of any court-martial proceedings under the Army Act 1955 and the Air Force Act 1955¹⁸. The prosecuting authority may amend or substitute any charge, prefer an additional charge or charges or discontinue proceedings on any charge¹⁹. These provisions are subject to limitations where an accused has elected for trial by court-martial²⁰. The prosecuting authority's power to amend or substitute any charge, or add an additional charge lasts only until the court-martial commences, after which the prosecuting authority must seek the leave of the court to make any amendment²¹. It is a matter for the judge advocate whether any amendment should be allowed, since whether to allow an application is a matter of law, practice or procedure on which the judge advocate gives rulings and directions²². Such rulings are binding²³.

In order to determine what charge or charges are appropriate, the prosecuting authority will read the statements and exhibits in the case or, where no charge has been preferred by the prosecuting authority, the prosecutor may order a formal preliminary examination at which the prosecution may examine the witnesses orally and may read out witness statements or any other record of evidence²⁴. If this course is taken, the court administration officer and the accused must have the order bringing the formal preliminary examination into being served upon them at least 24 hours before the hearing and, on receipt of the order, the court administration officer must summon the witnesses listed in the order which the prosecutor wishes to examine, and any of the witnesses which the accused requests, and make arrangements for an interpreter and court recorder to attend where it is considered necessary²⁵.

In the army, the formal preliminary examination is conducted by an officer of the legal services branch of any corps of the regular forces²⁶ and in the air force by an officer of the legal branch of the regular air force²⁷. At the formal preliminary examination, subject to the exception set out below, the legal officer conducting the formal preliminary examination (the conducting officer) will examine each witness, after which the accused is entitled to cross-examine each witness²⁸. The evidence of any witness whom the conducting officer has indicated is to be read, should be read by the conducting officer unless the accused consents to the inclusion of the evidence in the record of the formal preliminary examination without having been read²⁹. If the matter being investigated consists of an allegation of behaviour of a violent, cruel or sexual nature and a witness is under 17, the conducting officer may read out any written statement from the witness if it contains evidence which would be admissible if given orally and, even if the witness does give evidence, the accused is prohibited from cross-examining in person³⁰. The conducting officer can summon any witness during the proceedings³¹. Prior to the hearing, it is for the court administration officer to issue any witness summons³².

After the evidence called by the conducting officer has become part of the proceedings he must tell the accused that he, the accused, may give evidence if he wishes to do so but that he is not obliged to give evidence, and he must be told the consequences of choosing to remain silent and also that he may call witnesses on his behalf³³.

The accused may call any witness to give evidence orally and he can give evidence himself but neither he nor his witnesses can be cross-examined by the conducting officer, whose questions must be limited to resolving ambiguities so as to enable the evidence to be recorded in a coherent form³⁴.

The conducting officer administers the oath to all witnesses before the formal preliminary examination, unless the witness is under the age of 14, when his evidence will be received unsworn³⁵. The evidence is recorded by the conducting officer if there is no verbatim recorder and if the conducting officer records the evidence he must read back the evidence of each witness who must correct it when necessary and sign his record of evidence³⁶. The record is delivered by the conducting officer to the prosecuting authority who then considers what, if any, charge is appropriate³⁷. The record of the formal preliminary examination is served upon the defence as part of the prosecution papers if the prosecuting authority decides to proceed against the accused³⁸.

The prosecuting authority also has a role in advising police forces³⁹.

Despite their delegated role, prosecuting officers must conduct the case with independence in the interests of justice⁴⁰.

1 An officer is not qualified to be appointed as the prosecuting authority unless he is a person who has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742), is an advocate or solicitor of at least ten years standing in Scotland, or is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least ten years standing: Army Act 1955 s 83A(2) (s 83A added by the Armed Forces Act 1996 s 5, Sch 1 para 14); Air Force Act 1955 s 83A(2) (s 83A added by the Armed Forces Act 1996 Sch 1 para 15).

- 2 Army Act 1955 s 83A(1); Air Force Act 1955 s 83A(1) (both as added: see note 1 supra).
- 3 As to the Army and Air Force Boards and the Defence Council see para 2 ante.
- 4 As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529 et seq.
- 5 An officer may not be appointed as a prosecuting officer unless he has a general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742), is an advocate or solicitor in Scotland or is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland: Army Act 1955 s 83C(2) (s 83C added by the Armed Forces Act 1996 Sch 1 para 14); Air Force Act 1955 s 83C(2) (s 83C added by the Armed Forces Act 1996 Sch 1 para 15).
- 6 Army Act 1955 s 83C(1); Air Force Act 1955 s 83C(1) (both as added: see note 5 supra).
- 7 See para 480 et seq post.
- 8 See para 359 et seq post.
- 9 See paras 520-528 et seq post.
- 10 By virtue of the Army Act 1955 s 209(3)(e) and the Air Force Act 1955 s 209(3)(e), a civilian is dealt with as an officer or warrant officer for the purposes of investigation and summary dealing and so can only be dealt with by the appropriate superior authority summarily: see para 355 post.
- 11 As to the appropriate superior authority see para 354 note 8 post.
- 12 Army Act 1955 s 83B(1)-(3) (s 83B added by the Armed Forces Act 1996 Sch 1 para 14; and the Army Act 1955 s 83B(2), (3) amended by the Armed Forces Discipline Act 2000 s 13, Sch 2 para 1(1), (2)); Air Force Act 1955 s 83B(1)-(3) (s 83B added by the Armed Forces Act 1996 Sch 1 para 15; and the Air Force Act 1955 s 83B(2), (3) amended by the Armed Forces Discipline Act 2000 Sch 2 para 1(1), (2)).
- 13 Army Act 1955 s 83B(4); Air Force Act 1955 s 83B(4) (both as added (see note 12 supra); and amended by the Armed Forces Discipline Act 2000 Sch 2 para 1(3)). The prosecuting authority can only determine trial by general court-martial for officers (Army Act 1955 s 83B(5); Air Force Act 1955 s 83B(5) (both as added: see note 12 supra)); this is because a district court-martial has no power to try them. The prosecuting authority must notify the commanding officer of the accused and a court administration officer of any charge preferred and the description of court-martial by which that charge is to be tried; and the commanding officer must inform the accused accordingly: Army Act 1955 s 83B(6); Air Force Act 1955 s 83B(6) (both as added: see note 12 supra). It must be stated on the charge-sheet whether the charge or charges are to be tried by general court-martial or by district court-martial: Courts-Martial (Army) Rules 1997, SI 1997/169, r 7(1)(e); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 7(1)(e). If the type of court-martial is changed by the prosecuting authority prior to the commencement of the trial, notice in writing must be served on the accused and the court administration officer: Courts-Martial (Army) Rules 1997, SI 1997/169, r 13; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 13.
- 14 See the Army Act 1955 s 83B(4)(a); and the Air Force Act 1955 s 83B(4)(a) (both as added and amended: see note 13 supra).
- 15 Army Act 1955 s 83BB(1) (s 83BB added by the Armed Forces Discipline Act 2000 Sch 2 para 3); Air Force Act 1955 s 83BB(1) (s 83BB added by the Armed Forces Discipline Act 2000 Sch 2 para 3). 'The preliminary charge' means the charge which would have been dealt with summarily had the accused not elected court-martial trial; and the reference to preferring a charge different from, or additional to, the preliminary charge includes a reference to amending, or substituting another charge for, a charge already preferred: Army Act 1955 s 83BB(2) (as so added); Air Force Act 1955 s 83BB(2) (as so added).
- 16 Army Act 1955 s 83BB(3); Air Force Act 1955 s 83BB(3) (both as added (see note 15 supra); and amended by the Armed Forces Act 2001 s 17, Sch 1 paras 3, 7). Where a charge is referred to a commanding officer under the Army Act 1955 s 83BB(1), (2A) (as added) or the Air Force Act 1955 s 83BB(1), (2A) (as added) (see the text and notes 15 supra, 17 infra), the commanding officer must deal with the charge as if it had been reported to him under the Army Act 1955 s 76 (as substituted) or the Air Force Act 1955 s 76 (as substituted) (see para 353 post): Army Act 1955 s 83BB(3); Air Force Act 1955 s 83BB(3) (both as so added and amended).
- 17 Army Act 1955 s 83BB(2A) (s 83BB as added (see note 15 supra); s 83BB(2A) added by the Armed Forces Act 2001 Sch 1 para 3); Air Force Act 1955 s 83BB(2A) (s 83BB as added (see note 15 supra); s 83BB(2A) added by the Armed Forces Act 2001 Sch 1 para 7). See note 16 supra.
- 18 Army Act 1955 s 83B(7); Air Force Act 1955 s 83B(7) (both as added: see note 12 supra).

19 Army Act 1955 s 83B(8); Air Force Act 1955 s 83B(8) (both as added: see note 12 supra). The prosecuting authority's powers must be exercised in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169 (as amended) and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171 (as amended), made by the Secretary of State by virtue of the powers conferred by the Army Act 1955 s 103 (as substituted and amended) and the Air Force Act 1955 s 103 (as substituted and amended), respectively (see para 487 post): Army Act 1955 s 83B(8); Air Force Act 1955 s 83B(8) (both as added: see note 12 supra). The power to amend or substitute a charge may be exercised in relation to an amended or substituted charge as well as in relation to any charge preferred by the prosecuting authority: Army Act 1955 s 83B(9); Air Force Act 1955 s 83B(9) (both as added: see note 12 supra). If, before the commencement of the trial of a charge against the accused ('the original charge'), the prosecuting authority exercises the power to prefer an additional charge or charges against the accused, he may direct any additional charge to be tried by the court-martial convened to try the original charge; and where he does so, the Army Act 1955 s 83B(6) (as added) and the Air Force Act 1955 s 83B(6) (as added) (see note 13 supra) apply with such exceptions and modifications as may be prescribed: Army Act 1955 s 83B(11); Air Force Act 1955 s 83B(11) (both as added: see note 12 supra). The prosecuting authority may not exercise the power to prefer an additional charge or charges against the accused after the commencement of the trial of a charge against the accused unless the court-martial gives him leave to do so; and where the prosecuting authority exercises that power with the leave of the court-martial, the court may try any additional charge preferred: Army Act 1955 s 83B(12); Air Force Act 1955 s 83B(12) (both as added: see note 12 supra).

20 See the Army Act 1955 s 83B(9A); and the Air Force Act 1955 s 83B(9A) (both added by the Armed Forces Discipline Act 2000 Sch 2 para 1(4)). In such a case, the prosecuting authority may not prefer a different charge from that on which the election was made or amend such a charge or prefer an additional charge, unless the accused gives written consent or the charge is being referred under the Army Act 1955 s 83BB (as added and amended) or the Air Force Act 1955 s 83BB (as added and amended) (see the text and notes 14-17 supra): Army Act 1955 s 83B(9A); Air Force Act 1955 s 83B(9A) (both as so added).

21 Army Act 1955 s 83B(10); Air Force Act 1955 s 83B(10) (both as added: see note 12 supra). If the prosecutor intends to amend or substitute another charge or charges for a charge before the court, to discontinue the proceedings on any charge, or to prefer an additional charge, he must seek the leave of the court: Courts-Martial (Army) Rules 1997, SI 1997/169, r 49(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 49(1). The prosecutor is the prosecuting authority or any prosecuting officer appointed by the prosecuting authority: Courts-Martial (Army) Rules 1997, SI 1997/169, r 2; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 2. If the prosecuting authority decides not to prefer any charge referred to him, or before the commencement of the trial of any charge preferred by him, discontinues proceedings on that charge, he may direct that, for the purposes of the Army Act 1955 s 134 (as amended) or the Air Force Act 1955 s 134 (as amended) (persons not to be tried for offences already disposed of: see para 486 post), the accused is to be deemed to have been tried by court-martial for the offence charged: Army Act 1955 s 83B(13); Air Force Act 1955 s 83B(13) (both as added (see note 12 supra); and substituted by the Armed Forces Discipline Act 2000 Sch 2 para 1(5)). If, after the commencement of the trial of any charge, the prosecuting authority discontinues proceedings on that charge, the court-martial may give a direction such as is mentioned in the Army Act 1955 s 83B(13) (as added and substituted) or the Air Force Act 1955 s 83B(13) (as added and substituted): Army Act 1955 s 83B(14); Air Force Act 1955 s 83B(14) (both as added: see note 12 supra).

If, before the commencement of the trial, the prosecutor amends or substitutes another charge or charges for the original charge or prefers an additional charge against the accused and directs that it should be tried by the same court-martial, he must serve notice on the accused and the court administration officer at least 24 hours before the time appointed for the trial of the original charge unless the accused consents to waive notice or accept late notice: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 14(1), (2); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 14(1), (2). Where the prosecutor is required to serve notice on the accused in accordance with this rule, he must do so by sending it to the commanding officer of the accused or, with the consent of the accused, by serving directly on him a copy of the amended charge-sheet, any papers which are required to be added to the prosecution papers as a result of the amendment and, where in the opinion of the prosecutor it is necessary, a statement explaining the effect of the Criminal Justice Act 1967 s 11 (as amended) (notice of alibi) and a form for the accused's notice of alibi: Courts-Martial (Army) Rules 1997, SI 1997/169, r 14(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 14(3). Although the Criminal Justice Act 1967 s 11 has been repealed for other purposes by the Criminal Procedure and Investigations Act 1996 s 74(1), (4), this does not affect its application to proceedings before courts-martial: s 74(3). If any documents are served on the commanding officer in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, r 14(3) or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 14(3), he must serve them on the accused as soon as practicable: Courts-Martial (Army) Rules 1997, SI 1997/169, r 14(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 14(4). Where the prosecutor is required to serve notice on the court administration officer, he must send to the court administration officer or, if less than 24 hours before the time appointed for trial, to the judge advocate, a copy of the amended charge-sheet and any papers which are required to be added to the prosecution papers as a result of the amendment of the charge: Courts-Martial (Army) Rules 1997, SI 1997/169, r 14(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 14(5). As to the judge advocate see para 484 post.

22 See the Army Act 1955 s 84B(3) (s 84B added by the Armed Forces Act 1996 Sch 1 Pt 3 para 17); and the Air Force Act 1955 s 84B(3) (s 84B added by the Armed Forces Act 1996 Sch 1 Pt 3 para 35).

23 Army Act 1955 s 84B(4); Air Force Act 1955 s 84B(4) (both as added: see note 22 supra).

24 See the Courts-Martial (Army) Rules 1997, SI 1997/169, rr 5, 6; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 5, 6.

25 Courts-Martial (Army) Rules 1997, SI 1997/169, r 5(3), (4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 5(3), (4).

26 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(1).

27 Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(1).

28 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(2).

29 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(3).

30 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(4).

31 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(5).

32 Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(1)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(1)(a).

33 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(6); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(6).

34 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(7); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(7).

35 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(8); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(8). The form of oath is set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, r 24, Sch 3 Pt II; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 24, Sch 3 Pt II. The witness may affirm: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 3 Pt I para 4; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 3 Pt I para 4.

36 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(9), (10); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(9), (10). A copy of any statement read out in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(3), (4) or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(3), (4) (see the text to notes 29-30 supra) and the transcript of any shorthand note or mechanical record must be included in the record of the examination: Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(11); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(11).

37 Courts-Martial (Army) Rules 1997, SI 1997/169, r 6(12); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 6(12).

38 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 11(3)(a); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 11(3)(a).

39 See the Army Act 1955 s 83BC; Air Force Act 1955 s 83BC (both added by the Armed Forces Act 2001 Sch 1 paras 4, 8). The prosecuting authority may give advice to police forces on all matters relating to offences under the Army Act 1955 or the Air Force Act 1955 or the Reserved Forces Act 1996 or offences which are treated as such: Army Act 1955 s 83BC(1); Air Force Act 1955 s 83BC(1) (both as so added).

'Police force' means the Royal Military Police, the Royal Naval Regulating Branch, the Royal Air Force Police, the Ministry of Defence Police (see POLICE vol 36(1) (2007 Reissue) para 120 et seq), any police force maintained under the Police Act 1996 s 2 (police forces in England and Wales outside London: see POLICE vol 36(1) (2007 Reissue) para 136), the metropolitan police force (see POLICE vol 36(1) (2007 Reissue) para 137), the City of London police force (see POLICE vol 36(1) (2007 Reissue) para 138), any police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1 (as amended), the Police Service of Northern Ireland, the British Transport Police (see POLICE vol 36(1) (2007 Reissue) para 129; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) paras 281-284), and the National Crime Squad (see POLICE vol 36(1) (2007 Reissue) para 430 et seq): Army Act 1955 s 83BC(2); Air Force Act 1955 s 83BC(2) (both as so added).

40 See the Courts and Legal Services Act 1990 ss 27, 28 (both as amended); and LEGAL PROFESSIONS vol 65 (2008) PARAS 497-498.

UPDATE

315-316 The Prosecuting Authorities

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. Her Majesty may appoint a person as the Director of Service Prosecutions: Armed Forces Act 2006 s 364(1). A person may be appointed as the Director of Service Prosecutions only if he (1) has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71; (2) is an advocate or solicitor in Scotland of at least ten years' standing; (3) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing; or (4) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, has had those rights and duties for at least ten years, and is subject to punishment or disability for breach of professional rules: Armed Forces Act 2006 s 364(2). The Director of Service Prosecutions is to hold and vacate office in accordance with the terms of his appointment: s 364(3). For these purposes 'relevant territory' means any of the Channel Islands, the Isle of Man, a Commonwealth country, or a British overseas territory: s 364(4). The Director of Service Prosecutions may appoint officers to be prosecuting officers: see s 365.

Where the Director of Service Prosecutions has had a case referred to him by a service policeman (under s 116) (see PARA 317A.2) or by a commanding officer (under s 120) (see PARAS 348, 353), he may (a) direct a commanding officer to bring specified charges; (b) where he gives such a direction, allocate the case for trial by the Service Civilian Court (see PARA 520) if that court has jurisdiction; (c) where he decides it would not be appropriate to give such a direction, refer the case to the commanding officer (in which event, under s 119 (see PARAS 348, 353) the commanding officer has initial powers in relation to the case); (d) give a direction under s 127 barring further proceedings for an offence to which the case relates: see s 121. As to who must be given the charge sheet where a commanding officer brings a charge under head (a), and as to requirements for the provision of documents in connection with the referral of a case to the commanding officer under head (c), see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 10, 12. A commanding officer must bring any charge which he is directed to bring by the Director of Service Prosecutions under the Armed Forces Act 2006 s 121: see s 122(1). Unless the Director of Service Prosecutions allocates the charge to the Service Civilian Court, the charge is to be regarded as allocated for trial by the Court Martial: see s 122(2).

Where a case is allocated for Court Martial trial under s 122, the Director of Service Prosecutions has power to amend the charge, substitute another charge, bring an additional charge, discontinue proceedings, refer the charge back to the accused's commanding officer if the charge can be heard summarily in accordance with s 52 (see PARAS 348, 353), allocate to the Service Civilian Court a charge which that court can deal with, and give a direction under s 127 barring further proceedings for an offence to which the case relates: see s 125(1), (2). For further provision as to the procedure for the amendment, substitution or adding of charges by the Director of Service Prosecutions, see SI 2009/2055 reg 14. Court Martial rules may be made by the Secretary of State under the Armed Forces Act 2006 s 163 (see PARA 519A.2) to restrict the exercise by the Director of Service Prosecutions of his powers under s 125 once an accused has been asked by the Court Martial how he pleads or where a charge is referred to the Court Martial by the Service Civilian Court: see s 125(3). See the Armed

Forces (Court Martial) Rules 2009, SI 2009/2041, r 60 (powers of Director after arraignment).

315 The army prosecuting authority and the air force prosecuting authority

TEXT AND NOTES--See also Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009, SI 2009/988; Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009, SI 2009/989; and *R v RF* [2009] EWCA Crim 682, [2009] All ER (D) 113 (Oct) (Crown has an obligation to pursue reasonable lines of inquiry in relation to material that may be held in states outside the European Union).

TEXT AND NOTE 16--As to investigation of charges by a commanding officer, see now the Armed Forces Act 2006 ss 113-115; and PARA 317A.

NOTE 21--Criminal Procedure and Investigations Act 1996 s 74(3) repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(iv) The Prosecuting Authorities/316. The naval prosecuting authority.

316. The naval prosecuting authority.

Responsibility for prosecuting cases at court-martial lies with the naval prosecuting authority. This is a legally qualified officer appointed by the Sovereign¹. He may delegate any of his functions to qualified officers appointed by him as prosecuting officers², who may be officers appointed to his staff or any other legally qualified naval officer who is given a case to prosecute. The prosecutor at a court-martial is in a similar position to prosecution counsel at a civilian criminal trial in the Crown Court in that his duty is to assist the court in arriving at the truth of the issues³.

1 Naval Discipline Act 1957 s 52H(1) (s 52H added by the Armed Forces Act 1996 s 5, Sch 1 para 16). No officer may be appointed as the prosecuting authority unless he is: (1) a person who has a five year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) an advocate or solicitor in Scotland of at least five years' standing; or (3) a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least five years' standing: Naval Discipline Act 1957 s 52H(2) (as so added). As to the functions of the prosecuting authority see s 52I (added by the Armed Forces Act 1996 Sch 1 para 16; and amended by the Armed Forces Discipline Act 2000 s 13, Sch 2 para 2). As to cases where the prosecuting authority may refer the charge back to the commanding officer of the accused see the Naval Discipline Act 1957 s 52II (added by the Armed Forces Discipline Act 2000 Sch 2 para 4; and amended by the Armed Forces Act 2001 s 17, Sch 1 para 14). As to the power of the prosecuting authority to advise police see the Naval Discipline Act 1957 s 52IJ (added by the Armed Forces Act 2001 Sch 1 para 15). See also generally the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170 (as amended). As to the duties of the prosecuting authority generally see the Manual of Naval Law vol II Ch 16.

2 See the Naval Discipline Act 1957 s 52J (added by the Armed Forces Act 1996 Sch 1 para 16). See also generally the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170 (as amended). As to the duties of prosecuting officers generally see the Manual of Naval Law vol II Ch 21.

3 See the Manual of Naval Law vol II Ch 21 art 2102. As to the duties of prosecuting counsel in criminal proceedings see *R v Banks* [1916] 2 KB 621, CCA; and LEGAL PROFESSIONS vol 66 (2009) PARA 1219.

UPDATE

315-316 The Prosecuting Authorities

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. Her Majesty may appoint a person as the Director of Service Prosecutions: Armed Forces Act 2006 s 364(1). A person may be appointed as the Director of Service Prosecutions only if he (1) has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71; (2) is an advocate or solicitor in Scotland of at least ten years' standing; (3) is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing; or (4) has in a relevant territory rights and duties similar to those of a barrister or solicitor in England and Wales, has had those rights and duties for at least ten years, and is subject to punishment or disability for breach of professional rules: Armed Forces Act 2006 s 364(2). The Director of Service Prosecutions is to hold and vacate office in accordance with the terms of his appointment: s 364(3). For these purposes 'relevant territory' means any of the Channel Islands, the Isle of Man, a Commonwealth country, or a British overseas territory: s 364(4). The Director of Service Prosecutions may appoint officers to be prosecuting officers: see s 365.

Where the Director of Service Prosecutions has had a case referred to him by a service policeman (under s 116) (see PARA 317A.2) or by a commanding officer (under s 120) (see PARAS 348, 353), he may (a) direct a commanding officer to bring specified charges; (b) where he gives such a direction, allocate the case for trial by the Service Civilian Court (see PARA 520) if that court has jurisdiction; (c) where he decides it would not be appropriate to give such a direction, refer the case to the commanding officer (in which event, under s 119 (see PARAS 348, 353) the commanding officer has initial powers in relation to the case); (d) give a direction under s 127 barring further proceedings for an offence to which the case relates: see s 121. As to who must be given the charge sheet where a commanding officer brings a charge under head (a), and as to requirements for the provision of documents in connection with the referral of a case to the commanding officer under head (c), see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 10, 12. A commanding officer must bring any charge which he is directed to bring by the Director of Service Prosecutions under the Armed Forces Act 2006 s 121: see s 122(1). Unless the Director of Service Prosecutions allocates the charge to the Service Civilian Court, the charge is to be regarded as allocated for trial by the Court Martial: see s 122(2).

Where a case is allocated for Court Martial trial under s 122, the Director of Service Prosecutions has power to amend the charge, substitute another charge, bring an additional charge, discontinue proceedings, refer the charge back to the accused's commanding officer if the charge can be heard summarily in accordance with s 52 (see PARAS 348, 353), allocate to the Service Civilian Court a charge which that court can deal with, and give a direction under s 127 barring further proceedings for an offence to which the case relates: see s 125(1), (2). For further provision as to the procedure for the amendment, substitution or adding of charges by the Director of Service Prosecutions, see SI 2009/2055 reg 14. Court Martial rules may be made by the Secretary of State under the Armed Forces Act 2006 s 163 (see PARA 519A.2) to restrict the exercise by the Director of Service Prosecutions of his powers under s 125 once an accused has been asked by the Court Martial how he pleads or where a charge is referred to the Court Martial by the Service Civilian Court: see s 125(3). See the Armed Forces (Court Martial) Rules 2009, SI 2009/2041, r 60 (powers of Director after arraignment).

316 The naval prosecuting authority

TEXT AND NOTES--See also Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009, SI 2009/988; Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2008, SI 2009/989; and *R v RF* [2009] EWCA Crim 682, [2009] All ER (D) 113 (Oct) (Crown has an obligation to pursue reasonable lines of inquiry in relation to material that may be held in states outside the European Union).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(v) Investigation of Offences/A. APPLICATION OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984 AND CODES OF PRACTICE/(A) In general/317. Investigation and inquiries into offences.

(v) Investigation of Offences

A. APPLICATION OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984 AND CODES OF PRACTICE

(A) IN GENERAL

317. Investigation and inquiries into offences.

Provisions of the Police and Criminal Evidence Act 1984¹ which relate to investigations of offences conducted by police officers or to persons detained by the police are applied, with modifications, to investigations of offences conducted by a service policeman² under the service discipline Acts³, or to persons under arrest under those Acts⁴. Persons other than police officers who are concerned with inquiries into offences under the service discipline Acts are required to observe Codes of Practice issued by the Secretary of State⁵.

Codes of practice have been issued⁶ in relation to:

- 96 (1) the treatment and questioning of persons by the service police⁷;
- 97 (2) the tape recording of service police interviews with suspects⁸; and
- 98 (3) the identification of persons suspected of offences under the service discipline Acts⁹.

The Codes of Practice are intended to reflect the spirit and to introduce the detailed principles of the Codes of Practice for the civilian police, as accurately as the special conditions and exigencies of service life permit¹⁰. They also aim to provide persons questioned by the service police with comparable rights to those enjoyed by their counterparts in the civilian justice system¹¹. By providing clear instructions to the service police, the Codes of Practice seek to avoid uncertainty that may impede the service police in their attempts to bring offenders to justice¹².

A failure by any person to comply with any provision of a Code of Practice does not generally of itself render him liable to any criminal or civil proceedings¹³. Codes of Practice issued by the Secretary of State are admissible in evidence in both civil and criminal proceedings¹⁴, and if any provision of a Code of Practice appears to the relevant court or tribunal to be relevant to any question arising in the proceedings it must be taken into account in determining that question¹⁵. Provisions of the Police and Criminal Evidence Act 1984 relating to evidence in criminal proceedings¹⁶ have effect for the purposes of proceedings before a court-martial constituted under the Army Act 1955 or the Air Force Act 1955, before the Courts-Martial Appeal Court and before a standing civilian court, subject to any modifications which the Secretary of State may by order specify¹⁷.

¹ See generally CRIMINAL LAW, EVIDENCE AND PROCEDURE.

² For the purposes of the Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 1997, SI 1997/15, 'service policeman' means a member of the Royal Naval Regulating Branch, the Royal Marines Police, the Royal Military Police, the Royal Air Force Police, or the staff of the Royal Air Force Provost

Marshal: Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 1997, SI 1997/15, art 1(2) (made under the Police and Criminal Evidence Act 1984 s 113).

For the purposes of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, 'the Royal Air Force Police' includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers: Army Act 1955 s 225(1) (definition added by the Armed Forces Act 2001 s 34, Sch 6 para 46); Air Force Act 1955 s 223(1) (definition added by the Armed Forces Act 2001 Sch 6 para 47); Naval Discipline Act 1957 s 135(1) (definition added by the Armed Forces Act 2001 Sch 6 para 46). For the meaning of 'provost officer' see para 403 note 3 post.

3 As to the service discipline Acts see para 302 ante.

4 See the Police and Criminal Evidence Act 1984 s 113(1); and the Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 1997, SI 1997/15. The provisions applied and modified are contained in the Police and Criminal Evidence Act 1984 s 54 (as amended) (searches of detained persons), s 55 (as amended) (intimate searches), s 56 (as amended) (right to have someone informed when arrested), s 58 (as amended) (access to legal advice), s 61 (as amended; prospectively further amended) (fingerprinting), s 62 (as amended) (intimate samples), s 63 (as amended; prospectively further amended) (other samples), s 63A (as added and amended) (supplementary provisions relating to fingerprints and samples), s 64 (as amended) (destruction of fingerprints and samples), s 65 (as amended) (supplementary), and s 117 (power to use reasonable force when taking fingerprints and samples under relevant provisions): see the Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 1997, SI 1997/15, art 2, Schedule; and CRIMINAL LAW, EVIDENCE AND PROCEDURE.

As from a day to be appointed, the Police and Criminal Evidence Act 1984 s 113(1) is amended so as to provide that it is any provision of Pt V (ss 53-65) (as amended; prospectively further amended), or Pt XI (ss 113-122) (as amended; prospectively further amended), so far as relating to Pt V (as amended; prospectively further amended), that may be applied: see s 113(1) (prospectively amended by the Armed Forces Act 2001 s 13(1), (2)). At the date at which this volume states the law no such day had been appointed.

5 See the Police and Criminal Evidence Act 1984 s 113(3). As from a day to be appointed, s 113(3) is amended so as to provide that the Secretary of State must issue a Code of Practice, or a number of such Codes of Practice, for persons other than police officers who are concerned with the exercise of the powers conferred by the Armed Forces Act 2001 Pt 2 (ss 2-16) (powers of entry, search and seizure), or inquiries into offences under the service discipline Acts: see the Police and Criminal Evidence Act 1984 s 113(3) (prospectively amended by the Armed Forces Act 2001 s 13(1), (3)). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see para 2 ante.

6 Codes of Practice have been issued by the Secretary of State under the Police and Criminal Evidence Act 1984 s 113(3). The Codes of Practice mentioned in heads (1)-(3) in the text are effective as from 1 February 1997: see the Police and Criminal Evidence Act 1984 (Codes of Practice) (Armed Forces) Order 1997, SI 1997/17. As from 30 September 2003 Code of Practice A (relating to statutory powers of stop and search: see para 330 post), Code of Practice B (relating to statutory powers for the entry and search of premises and the seizure of property: see para 331 post) and the Commanding Officer's Code of Practice also come into operation: see the Police and Criminal Evidence Act 1984 (Codes of Practice) (Armed Forces) Order 2003, SI 2003/2315.

7 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police; and paras 318-326 post.

8 See the Code of Practice for the Tape Recording of Service Police Interviews with Suspects; and para 327 post.

9 See the Code of Practice for the Identification of Persons Suspected of Offences under the Service Discipline Acts; and para 328 post.

10 Code of Practice for the Treatment and Questioning of Persons by the Service Police, Foreword para 1; Code of Practice for the Tape Recording of Service Police Interviews with Suspects, Foreword para 3; Code of Practice for the Identification of Persons Suspected of Offences under the Service Discipline Acts, Foreword para 3. As to the Codes of Practice for the civilian police see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 908, 946 et seq, 971 et seq, 1010 et seq.

11 Code of Practice for the Treatment and Questioning of Persons by the Service Police, Foreword para 1; Code of Practice for the Tape Recording of Service Police Interviews with Suspects, Foreword para 3; Code of Practice for the Identification of Persons Suspected of Offences under the Service Discipline Acts, Foreword para 3.

12 Code of Practice for the Treatment and Questioning of Persons by the Service Police, Foreword para 1; Code of Practice for the Tape Recording of Service Police Interviews with Suspects, Foreword para 3; Code of

Practice for the Identification of Persons Suspected of Offences under the Service Discipline Acts, Foreword para 3.

13 See the Police and Criminal Evidence Act 1984 s 113(8). The exceptions are: (1) proceedings under any provision of the Army Act 1955 or the Air Force Act 1955, other than the Army Act 1955 s 70 (as amended; prospectively further amended) or the Air Force Act 1955 s 70 (as amended; prospectively further amended) (see para 422 post); and (2) proceedings under any provision of the Naval Discipline Act 1957, other than s 42 (as amended; prospectively further amended) (see para 422 post): see the Police and Criminal Evidence Act 1984 s 113(9).

14 'Criminal proceedings' includes: (1) proceedings in the United Kingdom or elsewhere before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957; (2) proceedings before the Courts-Martial Appeal Court; and (3) proceedings before a standing civilian court: Police and Criminal Evidence Act 1984 s 113(11) (amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 1). As to courts-martial see para 448 et seq post. As to the Courts-Martial Appeal Court see para 530 et seq post; and COURTS vol 10 (Reissue) paras 801-804. As to standing civilian courts see para 520 et seq post. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

15 See the Police and Criminal Evidence Act 1984 s 113(10).

16 See *ibid* Pt VII (ss 71-72) (as amended), Pt VIII (ss 73-82) (as amended): see generally CRIMINAL LAW, EVIDENCE AND PROCEDURE.

17 See *ibid* s 113(12).

UPDATE

317 Investigation and inquiries into offences

TEXT AND NOTES--Police and Criminal Evidence Act 1984 s 113(1), (9) substituted, s 113(2)-(4), (12) amended, s 113(11) repealed, s 113(12A), (14) added: Armed Forces Act 2006 Sch 16 para 105.

As to the duties of commanding officers to investigate offences see PARA 317A.

NOTES 4, 5--Day appointed: SI 2003/2268.

NOTE 4--SI 1997/15 replaced: Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009, SI 2009/1922.

TEXT AND NOTES 13-15--'Code' in this context means a code of practice under the Police and Criminal Evidence Act 1984 s 113(3) (see TEXT AND NOTE 5): s 113(3A) (added by the Criminal Justice Act 2003 s 11(3)).

NOTE 13--1984 Act s 113(8) amended: 2003 Act Sch 37 Pt 1.

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317A. Investigation under the Armed Forces Act 2006.

1. Duties of commanding officers

If an officer becomes aware of an allegation or circumstances which would indicate to a reasonable person that a service offence listed in the Armed Forces Act 2006 Sch 2 (see below) has or may have been committed by a relevant person, he must as soon as is reasonably practicable ensure that a service police force is aware of the matter: s 113(1), (2), (4). For these purposes 'relevant person' means a person whose commanding officer is the officer mentioned in s 113(1): s 113(3). The Secretary of State may by order amend Sch 2: s 113(5). The offences listed in Sch 2 are: (1) an offence under s 1 (assisting an enemy) (see PARA 393); (2) an offence under s 2(1) (misconduct on operations) (see PARA 392); (3) an offence under s 3 (obstructing operations) (see PARA 394) which relates to an action or operation against an enemy; (4) an offence under s 4(1) or (2) (looting) (see PARA 398); (5) an offence under s 6 (mutiny) (see PARA 399); (6) an offence under s 7 (failure to suppress mutiny) (see PARA 399); (7) an offence under s 8 (desertion) (see PARA 404) where the accused intended to avoid a period of active service (within the meaning of that provision); (8) an offence under s 31(1) (hazarding of ship) (see PARA 409); (9) an offence under s 33(1) (dangerous flying etc) (see PARA 409); (10) an offence under s 39 (see PARA 420) of attempting to commit an offence within any of heads (1)-(9); (11) an offence under s 40 (see PARA 421) of encouraging or assisting the commission of an offence within any of heads (1)-(9); and (12) an offence under s 42 (criminal conduct) (see PARA 422) as respects which the corresponding offence under the law of England and Wales is one of those specified: see Sch 2 (amended by the Serious Crime Act 2007 Sch 5 paras 7, 13; and the Criminal Justice and Immigration Act 2008 Sch 26 Pt 2 para 82(1), (2)). As to the meaning of 'service offence' see PARA 451; and as to the meaning of 'service police force' see PARA 403.

If an officer of a prescribed description becomes aware of circumstances of a prescribed description, he must as soon as is reasonably practicable ensure that a service police force is aware of the matter: Armed Forces Act 2006 s 114(1). 'Prescribed' means prescribed by regulations under s 128: s 114(2). As to the officers and circumstances so prescribed, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 3-6.

The following provisions apply where an officer becomes aware of an allegation or circumstances within the Armed Forces Act 2006 s 115(2), and the officer is not required by s 113(1) or 114(1) to ensure that a service police force is aware of the matter: s 115(1). An allegation is, or circumstances are, within this provision if it or they would indicate to a reasonable person that a service offence has or may have been committed by a relevant person; s 115(2). 'Relevant person' means a person whose commanding officer is the officer mentioned in s 115(1): s 115(3). The officer must either ensure that the matter is investigated in such way and to such extent as is appropriate, or ensure, as soon as is reasonably practicable, that a service police force is aware of the matter: s 115(4). Section 115(4) does not apply if the matter has already been investigated in such way and to such extent as is appropriate: s 115(5).

2. Duty of service policeman following investigation

The following provisions apply where (1) a service police force has investigated an allegation which indicates, or circumstances which indicate, that a service offence has or may have been committed; or (2) a UK police force or overseas police force has investigated such an allegation or such circumstances and has referred the matter to a service police force: Armed Forces Act 2006 s 116(1). If (a) a service policeman considers that there is sufficient evidence to charge a person with an offence under Sch 2 (see PARA 317A.1), or (b) a service policeman considers that there is sufficient evidence to charge a person with any other service offence, and is aware of circumstances of a description prescribed by regulations under s 128 for these purposes, he must refer the case to the Director of Service Prosecutions ('the Director'): s 116(2). As to requirements for the provision of documents in connection with the referral of cases under s 116, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, reg 7. If a service policeman considers that there is sufficient evidence to charge a person with a service offence, and the Armed Forces Act 2006 s 116(2) does not apply, he must refer the case to the person's commanding officer: s 116(3). If the allegation or circumstances gave rise to the duty under s 113(1) or 114(1) (see PARA 317A.1), and a service policeman proposes not to refer the case to the Director under s 116(2), he must consult the Director as soon as is reasonably practicable (and before any referral of the case under s 116(3)): s 116(4). For the purposes of s 116(2) and (3) there is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted: s 116(5). As to the meaning of 'service offence' see PARA 451; as to the meaning of 'service police force' see PARA 403; and as to the meaning of UK police force see PARA 331. 'Overseas police force' means any force or body which is constituted outside the United Kingdom and the Isle of Man; and is engaged in the carrying on of activities similar to any carried on by a service police force or UK police force: s 375(4).

The following provisions apply where the investigation mentioned in s 116(1) relates to two or more incidents (or alleged incidents) or the conduct (or alleged conduct) of two or more persons: s 117(1). Each person's conduct in relation to each incident is to be regarded as giving rise to a separate case: s 117(2). If a case is referred under s 116(2) to the Director of Service Prosecutions (i) any other case of a description prescribed by regulations under s 128 for these purposes is to be treated as referred under s 116(2) to the Director of Service Prosecutions; and (ii) nothing in s 116(3) or (4) applies in relation to any case treated as so referred: s 117(3).

The following provisions apply where a service policeman considers that there is sufficient evidence to charge a person ('A') with a service offence and refers the case under s 116(2) to the Director of Service Prosecutions: s 118(1). The service policeman must as soon as reasonably practicable after referring the case notify A's commanding officer of the referral, and provide prescribed documents to A's commanding officer: s 118(2). As to the documents so prescribed, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, reg 8. A notification under the Armed Forces Act 2006 s 118(2) must specify the service offence the service policeman considers there is sufficient evidence to charge A with, and where that offence is not an offence under Sch 2, the circumstances he is aware of that are of a description prescribed as mentioned in s 116(2)(b) (see head (b)): s 118(3). In this provision any reference to there being sufficient evidence to charge a person with a service offence is to be read in accordance with s 116(5); and 'prescribed documents' means documents prescribed for the purposes of s 118(2) by regulations under s 128: s 118(4). Section 117(3)(a) (see head (ii)) does not apply for these purposes: s 118(5).

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(B) TREATMENT AND QUESTIONING OF PERSONS BY THE SERVICE POLICE

318. Suspected persons.

The Code of Practice for the Treatment and Questioning of Persons by the Service Police applies to service police¹ inquiries into offences and alleged offences under the service discipline Acts².

If a suspect³ appears to be under the age of 17 then he is treated as a juvenile in the absence of clear evidence to show that he is older⁴. Juveniles have various safeguards applied to them. The service policeman must, if it is practicable, ascertain the identity of a person responsible for the juvenile's welfare⁵. That person must be informed as soon as practicable that the juvenile is to be interviewed and where that interview⁶ is to take place⁷. In the case of a juvenile who is known to be the subject of a supervision order, reasonable steps must also be taken to notify the person supervising him⁸. A juvenile, whether suspected of crime or not, must not be interviewed or asked to provide or sign a written statement in the absence of an appropriate adult unless certain circumstances apply⁹. If an authorising service policeman¹⁰, or in cases where access to such a person is not practicable, the interviewing service policeman, considers that delay in interviewing the suspect will¹¹:

- 99 (1) lead to interference with or harm to evidence connected with a serious service offence¹² or interference with or physical injury to other persons¹³; or
- 100 (2) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it¹⁴; or
- 101 (3) hinder the recovery of any property obtained as a result of such an offence¹⁵,

a juvenile may be interviewed in the absence of the appropriate adult¹⁶. Questioning in these circumstances may not continue once sufficient information to avert the immediate risk has been obtained¹⁷. A record must be made of the grounds for any decision to interview a person under these circumstances¹⁸. If an authorising service policeman or, where access to such an officer is not practicable, the interviewing service policeman considers that there are exceptional circumstances, and the principal of a place of education or his nominee agrees, juveniles may be interviewed at their place of education¹⁹. Every effort should be made to notify both the parents or other persons responsible for the juvenile's welfare or the appropriate adult (if this is a different person) that the service police want to interview the juvenile and reasonable time should be allowed to enable the appropriate adult to be present at the interview²⁰. Where awaiting the appropriate adult would cause unreasonable delay, the principal or his nominee can act as the appropriate adult for the purposes of the interview unless the interviewee is suspected of an offence against the educational establishment²¹.

Similarly, if a service policeman has any suspicion or is told in good faith that a suspect of any age may be mentally disordered or mentally handicapped, or is mentally incapable of understanding the significance of questions put to him or his replies, then that person must be treated as a mentally disordered or mentally handicapped person for the purposes of the Code of Practice²². Such a person, whether suspected of crime or not, must also not be interviewed or asked to provide or sign a written statement in the absence of an appropriate adult²³ unless an authorising service policeman or, in cases where access to such a person is not practicable, the

interviewing service policeman considers that delay in interviewing the suspect will lead to the consequences set out in heads (1) to (3) above, in which case questioning may not continue once sufficient information to avert the immediate risk has been obtained²⁴.

Where a service policeman has any suspicion that the suspect is a juvenile, is mentally handicapped or is suffering from a mental disorder, or is mentally incapable of understanding the significance of questions put to him or his replies, then, before beginning the interview²⁵, the service policeman must, as soon as is practicable, inform the appropriate adult of the grounds for his interview and his whereabouts, and ask the appropriate adult to come to the interview location to see the suspect²⁶. In any event, the service policeman must inform the suspect's commanding officer, or other relevant service authority that it is intended to interview that suspect²⁷. When such a person is being interviewed as a witness and a service policeman comes to suspect that person has committed an offence, the service policeman must treat that person as a suspect in accordance with the Codes of Practice²⁸. If the appropriate adult is not present when the suspect is informed of his legal rights²⁹, the information concerning those rights must be repeated to the suspect in the presence of the appropriate adult once that person has arrived³⁰. The suspect should be advised by the service policeman that the appropriate adult is there to assist and advise the suspect and that the suspect can consult privately with the appropriate adult at any time³¹. Where the appropriate adult is present at an interview, he should be informed that he is not expected to act simply as an observer, and that the purposes of his presence are, first, to advise the suspect and to observe whether or not the interview is being conducted properly and fairly, and, secondly, to facilitate communication with the suspect³². If, having been informed of the suspect's right to legal advice, the appropriate adult considers that legal advice should be taken, then the suspect has a right to legal advice in the same way as any other suspect³³. If a suspect appears to be blind or seriously visually handicapped, deaf, unable to read, unable to speak or has difficulty orally because of a speech impediment, he should be treated as such for the purposes of the Code of Practice in the absence of clear evidence to the contrary³⁴. If a suspect appears to be deaf or there is doubt about his hearing or speaking ability or his ability to understand English and the service policeman cannot establish effective communication, the service policeman must as soon as practicable call an interpreter and ask him to provide the information required³⁵. If the suspect is blind or seriously visually handicapped or is unable to read, the service policeman should ensure that the legal adviser³⁶, the appropriate adult or some other independent person likely to take an interest in his welfare (and not involved, and not likely to be involved in the investigation) is available to help in checking any documentation³⁷. Where the Code of Practice requires written consent, or signature or certification by the suspect, then, if the suspect so wishes, the person who is assisting the suspect may be asked to sign instead³⁸.

A service policeman who has detained or is about to interview or is interviewing a suspect must immediately call a member of the service medical authority³⁹ if the person being interviewed⁴⁰:

- 102 (a) appears to be suffering from physical illness or a mental disorder⁴¹;
- 103 (b) is injured⁴²;
- 104 (c) does not show signs of sensibility and awareness⁴³;
- 105 (d) fails to respond normally to questions or conversation (other than through drunkenness alone)⁴⁴; or
- 106 (e) otherwise appears to need medical attention⁴⁵.

This applies even if the suspect makes no request for medical attention and whether or not he has recently had medical treatment elsewhere (unless brought to the interview direct from medical care)⁴⁶. Where a suspect is within the categories specified in heads (a) to (e) above, he must not be interviewed until he has been medically examined and received any treatment advised as necessary, and the medical officer has certified his fitness to be interviewed⁴⁷. If a suspect requests a medical examination, a medical officer must be called as soon as

practicable⁴⁸. A record must be kept of any request for a medical examination, of the arrangements for any examinations made, and of any medical directions given⁴⁹. If a person is interviewed at a hospital or medical centre where he is receiving treatment, he may not be questioned without the agreement of a registered medical practitioner⁵⁰.

1 'Service policeman' means a member of the Royal Naval Regulating Branch, the Royal Marines Police, the Royal Military Police, and a Royal Air Force Provost Officer or a member of the Royal Air Force Police: Code of Practice for the Treatment and Questioning of Persons by the Service Police para 1.4a.

2 See *ibid* paras 1.1, 1.4g. The Code of Practice must be readily available, where practicable, for consultation by service policemen, suspects and others: see para 1.2. Whenever the Code of Practice requires a person to be given certain information, he does not have to be given it if he is incapable at the time of understanding what is said to him or is violent or is in urgent need of medical attention, but he must be given it as soon as practicable: para 1.3.

3 'Suspect' means a person subject to one or more of the service discipline Acts whom a service policeman has grounds to suspect of committing an offence under one or more of those Acts: Code of Practice for the Treatment and Questioning of Persons by the Service Police para 1.4j. As to the service discipline Acts see para 302 *ante*.

4 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 1.5.

5 See *ibid* para 1.7. The responsible person may be his parent or guardian (or, if he is in care, the care authority or voluntary organisation) or any other person who has for the time being assumed responsibility for his welfare: see para 1.7.

6 'Interview' means the questioning of a person regarding his involvement or suspected involvement in a service offence which is required to be carried out under caution: *ibid* para 1.4k. Procedures undertaken under the Road Traffic Act 1988 s 7 (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) para 986) do not constitute interviewing for these purposes: Code of Practice for the Treatment and Questioning of Persons by the Service Police para 1.4k.

7 See *ibid* para 1.7.

8 See *ibid* para 1.8.

9 See *ibid* para 1.9. This is unless Annex B applies. 'Appropriate adult', in the case of a juvenile, means: (1) his parent or guardian (or, if he is in care, the care authority or voluntary organisation); (2) a social worker; or (3) failing either head (1) or head (2) *supra*, another responsible adult aged 18 years or over, who is not a service policeman or employed by the service police and is not involved and not likely to be involved, in the investigation: para 1.4c(1).

10 'Authorising service policeman' means a commissioned service police officer not below the rank of lieutenant in the navy, captain in the army or flight lieutenant in the air force: *ibid* para 1.4b(1).

11 *Ibid* Annex B para 1.

12 'Serious service offence' means an offence under any of the service discipline Acts which cannot be dealt with summarily or which appears to a service policeman to be serious: Code of Practice for the Treatment and Questioning of Persons by the Service Police para 1.4h.

13 *Ibid* para 7.4a.

14 *Ibid* para 7.4b.

15 *Ibid* para 7.4c.

16 *Ibid* Annex B para 1b.

17 *Ibid* Annex B para 1.

18 *Ibid* Annex B para 2.

19 See *ibid* para 1.10.

20 *Ibid* para 1.10.

21 Ibid para 1.10.

22 See ibid para 1.6.

23 See ibid para 1.9. 'Appropriate adult' in the case of a suspect who is mentally disordered or mentally handicapped or is mentally incapable of understanding the significance of questions put to him or his replies, means: (1) a relative, guardian or other person responsible for his care or custody; or (2) someone who has experience of dealing with mentally disordered or mentally handicapped persons (such as an approved social worker as defined by the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) para 427) or a specialist social worker), but is not a service policeman or employed by the service police and is not involved and not likely to be involved in the investigation; or (3) failing either head (1) or head (2) supra, some other responsible adult aged 18 years or over, who is not a service policeman or employed by the service police and is not involved and not likely to be involved in the investigation: Code of Practice for the Treatment and Questioning of Persons by the Service Police para 1.4c(2).

24 See ibid Annex B para 1b.

25 Ie unless ibid Annex B applies: see the text to notes 10-11, 16-18, 24 supra.

26 Ibid para 1.11.

27 Ibid para 1.11.

28 See ibid para 1.11.

29 Ie under ibid Section 6.

30 See ibid para 1.12.

31 Ibid para 1.13.

32 Ibid para 1.14.

33 See ibid para 1.15. As to the right to legal advice see para 320 post.

34 Ibid para 1.16.

35 Ibid para 1.17.

36 'Legal adviser' means:

39 (1) a person who is qualified as a barrister-at-law or solicitor according to the law of England and Wales or Northern Ireland (ibid para 1.4e(1));

40 (2) a person who is qualified as an advocate or solicitor according to the law of Scotland (para 1.4e(2));

41 (3) a person having in any Commonwealth country or territory outside the United Kingdom, rights and duties similar to those of a barrister-at-law or a solicitor in England, and subject to punishment or disability for a breach of professional rules (para 1.4e(3)).

If a legal adviser wishes to send a clerk or legal executive to provide advice on his behalf, then the clerk or legal executive must be admitted to the interview for this purpose unless an authorising service policeman considers that such a visit would hinder the investigation of the crime; and if the authorising service policeman refuses access to the clerk or legal executive he must forthwith notify the legal adviser on behalf of whom the clerk or legal executive was to have acted and give him an opportunity of making further arrangements (para 1.4e(4)).

37 Ibid para 1.18.

38 Ibid para 1.18.

39 'Service medical authority' means a registered medical practitioner serving with, or under contract to, any branch of Her Majesty's forces: ibid para 1.4n.

40 Ibid para 1.19.

41 Ibid para 1.19a.

- 42 Ibid para 1.19b.
- 43 Ibid para 1.19c.
- 44 Ibid para 1.19d.
- 45 Ibid para 1.19e.
- 46 Ibid para 1.20.
- 47 Ibid para 1.21.
- 48 Ibid para 1.22.
- 49 Ibid para 1.23.
- 50 Ibid para 1.24.

UPDATE

318-319 Suspected persons, Cautions

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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319. Cautions.

A service policeman¹ must caution² a person whom there are grounds to suspect of committing an offence before any questions about it (or further questions if it is his answers to previous questions that provide grounds for suspicion) are put to him regarding his involvement or suspected involvement in that offence if his answers or his silence³ are to be given in evidence in a court⁴. He need not be cautioned if questions are put for other purposes, for example, solely to establish his identity or ownership of or responsibility for any vehicle or to obtain information in accordance with any relevant statutory requirement or in furtherance of the proper and effective conduct of a search, or to seek verification of a written record of interview⁵. Whenever a suspect⁶ who is not in arrest is initially cautioned before or during an interview he must at the same time be told that he is not in arrest and is not obliged to remain with the service policeman⁷. A service policeman must caution a person upon arrest unless it is impractical to do so by reason of his condition or behaviour at the time, or he has already been cautioned immediately prior to arrest in accordance with the provisions described above⁸. Any reply to the caution must be recorded as soon as practicable⁹. When there is a break in questioning under caution the interviewing service policeman must ensure that the suspect is aware that he remains under caution¹⁰.

When a suspect, subject to any of the service discipline Acts¹¹, who is interviewed after arrest fails or refuses to answer certain questions, or to answer them satisfactorily, after due warning, a court may draw such inferences as appear proper¹². These inferences apply when:

- 107 (1) a suspect is arrested by a service policeman and there is found on his person or in or on his clothing or footwear, or otherwise in his possession, or in the place where he was arrested, any objects, marks or substances, or marks on such objects, and the person fails or refuses to account for the objects, marks or substances found¹³; or
- 108 (2) an arrested person was found by a service policeman at a place at or about the time the offence for which he was arrested is alleged to have been committed, and the person fails or refuses to account for his presence at that place¹⁴.

For an inference to be drawn from a suspect's failure or refusal to answer a question about one of these matters or to answer it satisfactorily, the interviewing service policeman must first tell him in ordinary language¹⁵:

- 109 (a) what offence he is investigating¹⁶;
- 110 (b) what fact he is asking the suspect to account for¹⁷;
- 111 (c) that he believes this fact may be due to the suspect taking part in the commission of the offences in question¹⁸;
- 112 (d) that a court may draw a proper inference if he fails or refuses to account for the fact about which he is being questioned¹⁹;
- 113 (e) that a record is being made of the interview and that it may be given in evidence if he is brought to trial²⁰.

Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his immediate treatment, he should be informed of any relevant consequences and that they are not affected by the caution²¹. Examples are, when his refusal to provide his service particulars may render him liable to arrest, or when his refusal to provide particulars and information in accordance with a statutory requirement, for example, under the Road Traffic Act 1988 may amount to an offence or may make him liable to arrest²².

If a juvenile or a suspect who is mentally disordered or mentally handicapped or who is incapable of understanding the significance of what is being said to him, or his replies, is cautioned in the absence of the appropriate adult²³, the caution must be repeated in the appropriate adult's presence²⁴.

A record must be made when a caution is given, either in the service policeman's notebook or in the interview record as appropriate²⁵.

1 For the meaning of 'service policeman' see para 318 note 1 ante.

2 For the wording of the caution see the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 2.4.

3 The failure or refusal to answer a question or to answer satisfactorily.

4 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 2.1.

5 See *ibid* para 2.1. 'Record of interview' and 'interview record' mean both written and tape recorded records of interview: para 1.4I. For the meaning of 'interview' see para 318 note 6 ante.

6 For the meaning of 'suspect' see para 318 note 3 ante.

7 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 2.2.

8 See *ibid* para 2.3.

9 *Ibid* para 2.4.

10 *Ibid* para 2.5.

11 As to the service discipline Acts see para 302 ante.

12 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 2.6. The text refers to such inferences as appear proper under the Criminal Justice and Public Order Act 1994 ss 36, 37 (both as amended): see para 325 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1553, 1554.

13 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 2.6a.

14 *Ibid* para 2.6b.

15 *Ibid* para 2.7.

16 *Ibid* para 2.7a.

17 *Ibid* para 2.7b.

18 *Ibid* para 2.7c.

19 *Ibid* para 2.7d.

20 *Ibid* para 2.7e.

21 *Ibid* para 2.8.

22 *Ibid* para 2.8.

23 For the meaning of 'appropriate adult' see para 318 notes 9, 23 ante.

24 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 2.9.

25 Ibid para 2.10.

UPDATE

318-319 Suspected persons, Cautions

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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320. Right to legal advice.

Any suspect¹ being interviewed by the service police in connection with a serious service offence² may consult and communicate privately, whether in person, in writing, or on the telephone, with a legal adviser³, who may be⁴:

- 114 (1) a legal adviser of his own choice⁵;
- 115 (2) the duty solicitor (where a duty solicitor scheme is in operation)⁶;
- 116 (3) a legal adviser selected by him from a list of legal advisers who have indicated that they are available for the purpose of providing legal advice⁷;
- 117 (4) in certain overseas theatres, a service legal adviser⁸.

Suspects must be informed in writing of these options and that the option in head (1) above will be free of charge where the suspect is being interviewed in England or Wales unless the suspect agrees otherwise with his legal adviser, the option in head (2) above will always be free of charge, the option in head (3) above will be free of charge unless the suspect agrees otherwise with his legal adviser, and the option in head (4) above, when available, will also be free of charge⁹.

Overseas in areas where a service legal adviser is not established for the purpose of providing legal advice to suspects under the Police and Criminal Evidence Act 1984 or where advice on English law is not available from civilian lawyers, the suspect may make one telephone call free of charge to a legal adviser in the United Kingdom¹⁰. Where possible the service's telephone network should be used¹¹. In all cases, the call is to be treated as official and is not to be monitored¹². The suspect is to be allowed to make the call in private¹³.

The exercise of the right to legal advice may be delayed only¹⁴:

- 118 (a) where an authorising service policeman¹⁵ is unavailable or where access to such an officer is not practicable and the interviewing service policeman has reasonable grounds for believing that the exercise of the right to legal advice¹⁶:
 - .2
 - 1. (i) will lead to interference with or harm to evidence connected with a serious service offence or interference with or physical harm to other persons¹⁷; or
 - 2. (ii) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it¹⁸; or
 - 3. (iii) will hinder the recovery of any property obtained as a result of such an offence¹⁹;
 - .3
- 119 (b) if it appears to such an officer or interviewing service policeman that the exercise of the right to legal advice is not practicable²⁰.

Exercise of the right to legal advice may be delayed only for as long as necessary²¹. If the above grounds cease to apply the suspect must as soon as practicable be asked if he wishes to exercise the right to legal advice and then the ordinary procedure will take place for obtaining advice²². Access to a legal adviser may not be delayed on the grounds that the legal adviser may advise the suspect not to answer any questions, or that the legal adviser was initially

asked to attend the interview²³ by someone other than the suspect, provided that the suspect then wishes to see the legal adviser²⁴. In the latter case, the suspect must be told that the legal adviser has arrived as a result of another person's request, and must be asked to signify in writing or on tape whether or not he wishes to see the legal adviser²⁵.

A poster advertising the right to have free legal advice must be prominently displayed in all service police interview rooms and in other locations where appropriate and practicable²⁶.

No attempt is to be made by a service policeman²⁷ or any other person in authority to dissuade the suspect from obtaining legal advice²⁸.

A suspect who asks for legal advice may not be interviewed or continue to be interviewed until he has received that advice unless²⁹:

- 120 (A) the reasons for delay described above exist³⁰; or
 - 121 (B) an authorising service policeman or, where access to such an officer is not practicable, and a more senior service policeman is not available, and the interviewing serving policeman has reasonable grounds for believing that³¹:
- .4
- 4. (aa) a delay will involve an immediate risk of harm to persons or serious loss of, or damage to, property³²; or
 - 5. (bb) where a legal adviser, including a duty solicitor, has been contacted and has agreed to attend, awaiting his arrival would cause unreasonable delay to the process of investigation³³; or
 - 6. (cc) the legal adviser nominated by the suspect or selected by him from the list: cannot be contacted; has previously indicated that he does not wish to be contacted; or having been contacted, has declined to attend, and the suspect has been advised of the duty solicitor scheme (where one is in operation) but has declined to ask for the duty solicitor, or the duty solicitor is unavailable³⁴; the suspect initially requested legal advice but has changed his mind³⁵.
- .5

Where a suspect who initially requested legal advice subsequently changes his mind, the interview may be started or continued without further delay provided that the suspect has given his agreement in writing or on tape to being interviewed without receiving legal advice and that where practicable an authorising service policeman has given authority for the interview to proceed in those circumstances³⁶. If the suspect does not wish to speak to a legal adviser in person he must be reminded that the right to legal advice includes the right to speak with a legal adviser on the telephone³⁷. If the suspect continues to waive his right to legal advice, the service policeman must ask him the reasons for doing so and any reasons must be recorded on the tape or the contemporaneous written record of interview³⁸ as appropriate³⁹. Where a suspect has been permitted to consult a legal adviser and the legal adviser is available⁴⁰ at the time the interview begins or is in progress, the suspect must be allowed to have his legal adviser present while he is interviewed or before the interview proceeds further⁴¹. The legal adviser may only be required to leave the interview if his conduct is such that the interviewing service policeman is unable properly to put questions to the suspect⁴².

If the interviewing service policeman considers that a legal adviser is acting in such a way, he must stop the interview and consult his own authorising service policeman, if available⁴³. After speaking to the legal adviser, the authorising service policeman or senior service policeman will decide whether or not the interview should continue in the presence of that legal adviser or an alternative⁴⁴. If it is decided that it should not, the suspect will be given the opportunity to consult another legal adviser before the interview continues and that legal adviser will be given an opportunity to be present at the interview⁴⁵. The relevant service legal authority must be informed and any further action will be undertaken by it⁴⁶. The removal of a legal adviser from an interview is a serious step and, if it occurs, the facts must be reported to the authorising

service policeman, the commanding officers of both the service policeman and suspect, and any other relevant service authority⁴⁷. Consideration will be given by the service authorities as to whether the incident should be reported to the legal adviser's professional body⁴⁸. If a legal adviser arrives at the place of interview to see a particular suspect, that suspect must⁴⁹ be informed of the legal adviser's arrival and asked whether he would like to see him even if he has already declined legal advice⁵⁰. The legal adviser's attendance and the suspect's decision must be recorded on the interview record⁵¹, on tape or in writing⁵².

If a legal adviser wishes to send a non-accredited or probationary representative to provide advice on his behalf, then that person must be admitted for this purpose unless an authorising service policeman considers that such a visit will hinder the investigation and therefore directs otherwise⁵³. In exercising his discretion, the authorising service policeman should take into account whether the identity and status of the non-accredited or probationary representative has been satisfactorily established, whether he is of suitable character to provide legal advice, and any other matters in any written letter of authorisation provided by the legal adviser on whose behalf the person is attending⁵⁴. If the authorising service policeman refuses access to a non-accredited or probationary representative, or a decision is taken that such a person should not be permitted to remain at an interview, he must forthwith notify the legal adviser on whose behalf the non-accredited or probationary representative was to have acted, or was acting, and give him an opportunity to make alternative arrangements⁵⁵. The suspect must also be informed and a record made, where appropriate, on tape or in writing⁵⁶.

Any request for legal advice and the action taken on it must be recorded⁵⁷. If a suspect has asked for legal advice and an interview is commenced in the absence of a legal adviser, or the legal adviser has been required to leave the interview, a record must be made in the interview record, on tape or in writing⁵⁸.

1 For the meaning of 'suspect' see para 318 note 3 ante.

2 For the meaning of 'serious service offence' see para 318 note 12 ante.

3 For the meaning of 'legal adviser' see para 318 note 36 ante.

4 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.1.

5 Ibid para 3.1a.

6 Ibid para 3.1b.

7 Ibid para 3.1c.

8 Ibid para 3.1d.

9 See ibid para 3.1.

10 Ibid para 3.2.

11 Ibid para 3.2.

12 Ibid para 3.2.

13 Ibid para 3.2.

14 Ibid para 3.3.

15 For the meaning of 'authorising service policeman' see para 318 note 10 ante.

16 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police Annex A para 1a.

17 Ibid Annex A para 1a(1).

- 18 Ibid Annex A para 1a(2).
- 19 Ibid Annex A para 1a(3).
- 20 See ibid Annex A para 1b.
- 21 Ibid Annex A para 2.
- 22 See ibid Annex A para 2.
- 23 For the meaning of 'interview' see para 318 note 6 ante.
- 24 Code of Practice for the Treatment and Questioning of Persons by the Service Police Annex A para 3.
- 25 Ibid Annex A para 3.
- 26 Ibid para 3.4.
- 27 For the meaning of 'service policeman' see para 318 note 1 ante.
- 28 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.5.
- 29 Ibid para 3.6.
- 30 See ibid para 3.6a.
- 31 Ibid para 3.6b.
- 32 Ibid para 3.6b(1).
- 33 Ibid para 3.6b(2).
- 34 In these circumstances the interview may be started, or continued without further delay.
- 35 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.6b(3).
- 36 Ibid para 3.7.
- 37 See ibid para 3.7.
- 38 For the meaning of 'record of interview' see para 319 note 5 ante.
- 39 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.7.
- 40 Ie present at the interview or on his way to the interview, or easily contactable by telephone.
- 41 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.9.
- 42 Ibid para 3.10.
- 43 Ibid para 3.11.
- 44 Ibid para 3.11.
- 45 Ibid para 3.11.
- 46 Ibid para 3.11.
- 47 Ibid para 3.12.
- 48 Ibid para 3.12.
- 49 Ie unless ibid Annex A applies: see the text to notes 15-25 supra.
- 50 See ibid para 3.13.
- 51 For the meaning of 'interview record' see para 319 note 5 ante.

- 52 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.13.
- 53 Ibid para 3.14. Hindering the investigation does not include giving proper legal advice: see para 3.14.
- 54 See ibid para 3.15.
- 55 Ibid para 3.15.
- 56 Ibid para 3.15.
- 57 Ibid para 3.16.
- 58 Ibid para 3.17.

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321. Observers.

If a suspect¹ so requests, an officer (or warrant officer or senior non-commissioned officer from that suspect's unit) or, in the case of a civilian subject to the service discipline Acts², any other person who appears to the service policeman³ to be of equivalent status (that is to say, at least equivalent to a senior non-commissioned officer), may be asked to attend the interview⁴ of the suspect as an observer⁵. Before the nominated observer attends the interview, the interviewing service policeman must brief the observer on the requirements detailed below, and record a note to that effect in his service police notebook⁶. Immediately following the completion of the interview, the interviewing service policeman must record a brief statement of witness from the observer, to include comments on the conduct of the interview⁷. The observer is not to be invited to make his own notes of the interview but, should he do so, a certified true copy of the notes is to be retained by the interviewing service policeman and produced in the observer's statement of witness⁸. The sole purpose of the observer's presence is to provide an independent account of what happened at the interview⁹. The interviewing service policeman should explain to the observer, and the suspect, that the observer is not to advise either the service policeman or the suspect, and is not to take part in the interview¹⁰.

1 For the meaning of 'suspect' see para 318 note 3 ante.

2 As to the service discipline Acts see para 302 ante.

3 For the meaning of 'service policeman' see para 318 note 1 ante.

4 For the meaning of 'interview' see para 318 note 6 ante.

5 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 4.1. 'Observer' means an individual selected by a suspect who is requested to attend an interview, search or identification parade on behalf of the suspect: para 1.4f. An observer can be: (1) an officer; (2) a warrant officer; (3) a senior non-commissioned officer: para 1.4f.

6 Ibid para 4.2.

7 Ibid para 4.3.

8 Ibid para 4.4.

9 Ibid para 4.5.

10 Ibid para 4.5.

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322. Searches of persons in arrest.

When a suspect¹ has been arrested, a service policeman² may ascertain what property the suspect has with him and what property he has in his possession, which, in the opinion of the service policeman, he may use to³: (1) cause physical injury to himself or any other person⁴; (2) interfere with evidence⁵; (3) damage property⁶; or (4) assist him to escape⁷. To this end, the service policeman may search him or authorise his being searched to the extent that he considers necessary⁸. Separate provision is made for searches of intimate parts of the body⁹. Any search not amounting to an intimate search but involving the removal of more than outer clothing, jacket or gloves may only be made in accordance with the Code of Practice for the Treatment and Questioning of Persons by the Service Police¹⁰.

A search may only be carried out by a service policeman of the same sex as the suspect searched but if no service policeman is readily available, a search may be carried out by any officer, warrant officer, non-commissioned officer or rating of the same sex as the suspect searched and who is acting under the direction of a service policeman¹¹. A suspect is not to be required to remove any of his clothing in public other than an outer coat, jacket or gloves¹².

A service policeman may seize and retain articles, or cause any such article to be seized and retained¹³. Clothing and personal effects may only be seized if¹⁴:

- 122 (a) the service policeman believes that the suspect may use them to¹⁵:
- .6
- 7. (i) cause physical injury to himself or any other person¹⁶;
- 8. (ii) interfere with evidence¹⁷;
- 9. (iii) damage property¹⁸; or
- 10. (iv) assist him to escape¹⁹;
- .7
- 123 (b) the service policeman has reasonable grounds for believing that they may be evidence relating to an offence²⁰.

Where anything is seized, the suspect must be told the reason for the seizure²¹ and the service policeman is responsible for the safekeeping of any property taken from the suspect²².

A strip search²³ may take place only if a service policeman considers it to be necessary to remove an article which²⁴ the suspect would not be allowed to keep²⁵. The following procedures must be observed where strip searches are conducted²⁶:

- 124 (A) the service policeman carrying out the search must be of the same sex as the suspect to be searched²⁷;
- 125 (B) the search must take place in an area where the person being searched cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex, except an appropriate adult²⁸ who has been specifically requested by the person being searched²⁹;
- 126 (C) except in cases of urgency, where there is a risk of serious harm to the person detained or to others whenever a strip search involves exposure of intimate parts of the body there must be at least two people present other than the person

- searched, and if the search is of a juvenile or a mentally disordered or mentally handicapped person, one of the people must be the appropriate adult³⁰;
- 127 (D) the search must be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances and every reasonable effort must be made to secure the person's co-operation and minimise embarrassment³¹;
- 128 (E) where necessary to assist the search, the person may be required to hold his or her arms in the air or to stand with legs apart, and bend forward so that a visual examination may be made of the genital and anal areas, provided that no physical contact is made with any body orifice³²;
- 129 (F) if, during a search, articles are found, the person must be asked to hand them over³³;
- 130 (G) a strip search must be conducted as quickly as possible, and the person searched allowed to dress as soon as the procedure is complete³⁴.

Where a strip search is carried out, the service policeman must be of the same sex as the suspect searched³⁵, but where no such service policeman is readily available, the search may be carried out by an officer, warrant officer or non-commissioned officer or rating of the same sex as the suspect under the direction of a service policeman³⁶. During the search no person of the opposite sex who is not a registered medical practitioner or registered nurse may be present, nor may anyone whose presence is unnecessary³⁷.

Intimate searches of body orifices other than the mouth may be conducted only if³⁸:

- 131 (aa) the suspect has been arrested and the authorising service policeman³⁹ has reasonable grounds for believing that an article which could cause physical injury to a suspect or any other person has been concealed and may be used, or that the suspect has concealed on him a Class A drug which he intended to supply to another or to export, and in either case an intimate search is the only practicable means of removing it⁴⁰; and
- 132 (bb) prior authority is obtained from an authorising service policeman or, because of his unavailability, the next senior service policeman⁴¹.

The reasons why an intimate search is considered necessary must be explained to the suspect before the search takes place⁴². An intimate search may only be carried out by a registered medical practitioner or registered nurse unless an authorised service policeman considers that for extreme operational reasons or by virtue of his isolation this is not practicable and a search is to take place on the grounds that an article which could cause physical injury to a suspect or any other person has been concealed and may be used⁴³. Authority for an intimate search to be carried out other than by a registered medical practitioner or registered nurse may be given orally or in writing, but if given orally it is to be confirmed in writing as soon as practicable⁴⁴. Further provision is made in the Code of Practice for the Treatment and Questioning of Persons by the Service Police with regard to the privacy of the suspect and the place where the intimate search is to be carried out⁴⁵. Detailed provision is also made regarding the documentation of intimate searches⁴⁶.

1 For the meaning of 'suspect' see para 318 note 3 ante.

2 For the meaning of 'service policeman' see para 318 note 1 ante.

3 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 5.1.

4 Ibid para 5.5a(1).

5 Ibid para 5.5a(2).

6 Ibid para 5.5a(2).

7 Ibid para 5.5a(4).

8 Ibid para 5.1.

9 See ibid paras 5.1, 5.10-5.15.

10 See ibid para 5.1. As to the relevant provisions of the Code of Practice for the Treatment and Questioning of Persons by the Service Police see paras 5.3-5.7; and the text and notes 12-22 *infra*.

11 See ibid para 5.2.

12 Ibid para 5.3.

13 See ibid para 5.4.

14 Ibid para 5.5.

15 Ibid para 5.5a.

16 Ibid para 5.5a(1).

17 Ibid para 5.5a(2).

18 Ibid para 5.5a(3).

19 Ibid para 5.5a(4).

20 Ibid para 5.5b.

21 Ibid para 5.6.

22 Ibid para 5.7.

23 I.e. a search involving the removal of more than outer clothing.

24 I.e. in accordance with the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 5.5; see the text to notes 14-20 *supra*.

25 Ibid para 5.8.

26 Ibid para 5.8.

27 Ibid para 5.8a. See also the text to note 35 *infra*.

28 For the meaning of 'appropriate adult' see para 318 notes 9, 23 *ante*.

29 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 5.8b.

30 Ibid para 5.8c. Except in urgent cases, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that he prefers the search to be done in his absence and the appropriate adult agrees: see para 5.8c. A record must be made of the juvenile's decision and signed by the appropriate adult: para 5.8c. The presence of more than two people other than an appropriate adult is permitted only in the most exceptional circumstances: para 5.8c.

31 Ibid para 5.8d. People who are searched should not normally be required to have all their clothes removed at the same time; for example, a man must be allowed to put on his shirt before removing his trousers, and a woman must be allowed to put on her blouse and upper garments before further clothing is removed: para 5.8d.

32 Ibid para 5.8e.

33 Ibid para 5.8f. If articles are found within any body orifice other than the mouth, and the person refuses to hand them over, their removal could constitute an intimate search which must be carried out in accordance with the provisions of paras 5.10-5.15 (see the text and notes 38-45 *infra*): para 5.8f.

34 Ibid para 5.8g.

- 35 Ibid para 5.9. See also the text to note 27 supra.
- 36 Ibid para 5.9.
- 37 Ibid para 5.9.
- 38 See ibid para 5.10.
- 39 For the meaning of 'authorising service policeman' see para 318 note 10 ante.
- 40 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 5.10a.
- 41 Ibid para 5.10b.
- 42 Ibid para 5.11.
- 43 See ibid paras 5.10a(1), 5.12.
- 44 Ibid para 5.12.
- 45 See ibid paras 5.13-5.15.
- 46 See ibid paras 5.16-5.21.

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323. Notification of the rights of suspects at interviews.

The Code of Practice for the Treatment and Questioning of Persons by the Service Police makes detailed provision for the manner in which a suspect¹ must be notified of his rights when being interviewed by a service policeman². Before any questions about the offence (or further questions if it is his answers to previous questions that provide grounds for suspicion) are put to the suspect for the purpose of obtaining evidence, the service policeman must³:

- 133 (1) caution the suspect or cause him to be cautioned⁴;
- 134 (2) inform the suspect of the right to free legal advice when being interviewed in connection with a serious service offence⁵;
- 135 (3) inform the suspect of the right to request the presence of an observer⁶ at the interview⁷;
- 136 (4) inform the suspect whether he is or is not under arrest, and, if he is not, that he is free to leave the interview if he wishes⁸;
- 137 (5) if the suspect is under arrest, inform the suspect of his right not to be held incommunicado⁹;
- 138 (6) inform the suspect of the right to consult the Service Police Codes of Practice¹⁰ where practicable¹¹;
- 139 (7) inform a suspect who is a member of the naval service of the right to have his divisional officer present at any interview¹²;
- 140 (8) inform the suspect that he may exercise any of these rights now and at any later time¹³.

As soon as practicable the suspect must be given a written notice setting out the rights described in heads (1)-(8) above and the caution¹⁴. The suspect must be informed that the rights need not be exercised immediately¹⁵. Unless the interview is tape recorded, the suspect must be asked to sign or acknowledge on the contemporaneous written record of interview to signify that he has received the written notice and to state whether or not he wants legal advice at this point¹⁶. Where advice is requested, the service policeman must act without delay to secure the provision of such advice to the suspect¹⁷. If a suspect is in detention in a hospital he may not be questioned without the agreement of a registered medical practitioner responsible for his treatment¹⁸.

Any suspect arrested by a service policeman and subsequently held in close arrest¹⁹ under direct control or at the request of the service police, may on request have one person known to him or who is likely to take an interest in his welfare informed at public expense of his whereabouts as soon as practicable²⁰. This information must be conveyed to the suspect at the time of arrest or as soon as practicable thereafter²¹. If that person cannot be contacted the suspect who has made the request may choose up to two alternatives²². If they cannot be contacted, the service policeman has discretion to allow further attempts until the information has been conveyed²³. In any case the person under arrest must be permitted to exercise this right within 36 hours from the time of his arrest, and in any event his commanding officer must be notified of his arrest as soon as practicable²⁴. The exercise of the right in respect of each of the persons nominated may be delayed only if the suspect is under arrest, and in accordance with certain provisions²⁵. A suspect held in close arrest under the direct control of the service

police may receive visits at the discretion of the investigating policeman²⁶. The Code of Practice for the Treatment and Questioning of Persons by the Service Police makes provision for the suspect to be provided with writing materials and the use of a telephone, and for recording what is done in this connection²⁷.

1 For the meaning of 'suspect' see para 318 note 3 ante.

2 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 6; and the text and notes 3-27 infra. For the meaning of 'service policeman' see para 318 note 1 ante.

3 Ibid para 6.1.

4 Ibid para 6.1a. As to cautions see para 319 ante.

5 Ibid para 6.1b. For the meaning of 'serious service offence' see para 318 note 12 ante. As to the right to legal advice see para 320 ante.

6 For the meaning of 'observer' see para 321 note 5 ante.

7 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 6.1c. For the meaning of 'interview' see para 318 note 6 ante. As to the presence of observers at interviews see para 321 ante.

8 Ibid para 6.1d.

9 Ibid para 6.1e.

10 As to the Service Police Codes of Practice see para 317 ante.

11 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 6.1f.

12 Ibid para 6.1g.

13 Ibid para 6.1h.

14 See ibid para 6.10.

15 See ibid para 6.10. A poster advertising the right to have legal advice must be prominently displayed: para 6.11.

16 See ibid para 6.2.

17 See ibid para 6.2.

18 Ibid para 6.3.

19 'Close arrest' includes close custody: ibid para 1.4m.

20 Ibid para 6.4.

21 Ibid para 6.4.

22 Ibid para 6.4.

23 Ibid para 6.4.

24 Ibid para 6.4.

25 See ibid para 6.5. The text refers to the provisions of Annex A: see para 320 ante.

26 Ibid para 6.5.

27 See ibid paras 6.6-6.9.

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324. Interviews.

A service policeman¹ must never try to obtain answers to questions or to elicit a statement by the use of oppression². A service policeman³ must not indicate, except in answer to a direct question, what action will be taken on the part of the service police if the suspect⁴ being interviewed⁵ answers questions, makes a statement or refuses to do either⁶. If the suspect asks the service policeman directly what action will be taken in the event of his answering questions, making a statement or refusing to do either, then the service policeman may inform the suspect what action the service police propose to take in that event, provided that action is itself proper and warranted⁷.

At the beginning of an interview the interviewing service policeman, after cautioning⁸ the suspect, must put to him any significant statement or silence⁹ which occurred before his arrival at the interview location and ask him whether he confirms or denies that earlier statement or silence and whether he wishes to add anything¹⁰.

As soon as a service policeman who is making inquiries of any suspect about an offence believes that there is sufficient evidence for disciplinary action to be taken against that person, and there is sufficient evidence for it to succeed, he should ask the suspect if he has anything further to say¹¹. If the suspect indicates that he has nothing more to say the service policeman must, without delay, cease to question the suspect about that offence and inform him that a report will be submitted to his commanding officer¹².

The Code of Practice for the Treatment and Questioning of Persons by the Service Police makes detailed provision for:

- 141 (1) the suspect to be allowed a continuous period of at least eight hours for rest, free from questioning, travel or any interruption arising out of the investigation concerned, in any period of 24 hours in which he is being questioned by the service police¹³;
- 142 (2) the suspect not to be supplied with intoxicating liquor except on medical directions¹⁴;
- 143 (3) the interview rooms to be adequately heated, lit and ventilated¹⁵;
- 144 (4) the suspect to have access to toilet and washing facilities¹⁶; and
- 145 (5) the suspect to have meal breaks¹⁷.

If, in the course of the interview, a complaint is made by the suspect or on his behalf concerning the provisions of the Code of Practice for the Treatment and Questioning of Persons by the Service Police, the interviewing service policeman must record it in the interview record¹⁸ and inform his own and the suspect's commanding officer¹⁹.

Unless arrested, a suspect interviewed by the service police is free to leave the place of interview²⁰.

Reasonable force may be used if necessary to secure compliance with reasonable instructions, including instructions given in pursuance of the provisions of the Service Police Codes of Practice²¹, or to prevent escape (in the case of persons in arrest), injury, damage to property or the destruction of evidence²².

An accurate record must be made of each interview with a suspect wherever the interview takes place²³. A written record should also be made of any comments made by the suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence²⁴. If the interview is tape recorded the arrangements set out in the Code of Practice for the Tape Recording of Service Police Interviews with Suspects²⁵ apply²⁶. Where practicable all written statements made at service police interviews after caution must be written on the forms provided for the purpose²⁷. Where the appropriate adult²⁸, legal adviser²⁹, observer³⁰ or other person is present at an interview and is still present at the time a written record is made (or any written statement taken down by the service police), he must be asked to read it and sign it as correct or to indicate the respects in which he considers it inaccurate³¹. If that person refuses to sign the record as accurate or to indicate the respects in which he considers it inaccurate, the senior service policeman present must record on the record itself in the presence of that person what has happened³². Written interview records must be timed and signed by the maker³³.

A record must be kept of replacement clothing and meals offered³⁴, and of any intoxicating liquor supplied to a suspect³⁵.

If a complaint is made by or on behalf of a suspect about his treatment by the service police, a report must be made as soon as practicable to the commanding officer of the interviewing service policeman concerned and of the suspect³⁶. If the matter concerns a possible assault or the unnecessary or unreasonable use of force, then a registered medical practitioner must also be called as soon as practicable³⁷. Discriminatory behaviour on the grounds of a person's gender, colour, race, ethnic or national origin may render a service policeman, like any other member of the armed forces, liable to disciplinary action³⁸. A record must be made of any arrangements made for an examination by a registered medical practitioner and of any such complaint reported, together with any relevant remarks by the interviewing service policeman³⁹.

The Code of Practice for the Treatment and Questioning of Persons by the Service Police makes detailed provision for interpreters of foreign languages to be provided for suspects⁴⁰, and for interpreters to be provided for suspects who are deaf or have a speech handicap⁴¹. All reasonable attempts should be made to make clear to the suspect that interpreters will be provided at public expense⁴². The Code also makes detailed provision for the action to be taken to secure interpreters⁴³, and for documenting what has taken place⁴⁴.

1 For the meaning of 'service policeman' see para 318 note 1 ante.

2 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.1.

3 *Ibid* except as provided for in *ibid* paras 2.6-2.8: see para 319 ante.

4 For the meaning of 'suspect' see para 318 note 3 ante.

5 For the meaning of 'interview' see para 318 note 6 ante.

6 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.1.

7 *Ibid* para 7.1.

8 As to cautions see para 319 ante.

9 A 'significant' statement or silence is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt, or failure or refusal to answer a question or to answer it satisfactorily which may give rise to an inference under the Criminal Justice and Public Order Act 1994 Pt III (ss 31-51) (as amended) (see para 325 post; and CRIMINAL LAW, EVIDENCE AND PROCEDURE): Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.2.

10 *Ibid* para 7.2.

- 11 Ibid para 7.3.
 - 12 Ibid para 7.3.
 - 13 See ibid para 7.4.
 - 14 See ibid para 7.5.
 - 15 See ibid para 7.6.
 - 16 See ibid para 7.7.
 - 17 See ibid paras 7.8-7.11.
 - 18 For the meaning of 'interview record' see para 319 note 5 ante.
 - 19 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.12.
 - 20 Ibid para 7.13.
 - 21 Ibid para 7.14a. As to the Service Police Codes of Practice see para 317 ante.
 - 22 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.14b.
 - 23 See ibid para 7.16. The record must state the place of the interview, the date, the time it begins and ends, the time the record is made (if different), any breaks in it, and the names of all those present; and it must be made in the forms provided for this purpose, in the service policeman's notebook, or in accordance with the Code of Practice for the Tape Recording of Service Police Interviews with Suspects (see para 327 post): see the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.16a. The record must be made during the course of the interview unless in the interviewing service policeman's view this would not be practicable or would interfere with the conduct of the interview: para 7.16b. The record must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it: para 7.16b. If the record is not made during the course of the interview, the reason must be recorded in the service policeman's notebook and the record made as soon as practicable: see para 7.16b. Unless it is impracticable, the person interviewed must be given the opportunity to read the interview record and sign it as correct or to indicate the respects in which he considers it inaccurate: para 7.16c.
- Any decision to deny or delay a break in an interview must be recorded, with grounds, in the interview record: para 7.15.
- 24 Ibid para 7.17. Any such record must be timed and signed by the maker: para 7.17. Where practicable the suspect must be given the opportunity to read the record and sign it as correct or to indicate the respects in which he considers it inaccurate: para 7.17. Any refusal to sign should be recorded: 7.17.
 - 25 See para 327 post.
 - 26 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.18. See also para 7.21. If the suspect cannot read or refuses to read the record of interview or to sign it, the service policeman must read it over to him and ask whether he would like to sign it as correct (or to make his mark) or to indicate the respects in which he considers it inaccurate: para 7.18. The service policeman must then certify on the record of interview what has occurred: para 7.18.
 - 27 Ibid para 7.19. All written statements made under caution must be taken in accordance with Annex C: para 7.20.
 - 28 For the meaning of 'appropriate adult' see para 318 notes 9, 23 ante.
 - 29 For the meaning of 'legal adviser' see para 318 note 36 ante.
 - 30 For the meaning of 'observer' see para 321 note 5 ante.
 - 31 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 7.21.
 - 32 Ibid para 7.21.
 - 33 Ibid para 7.22.
 - 34 Ibid para 7.23.

- 35 Ibid para 7.24.
- 36 Ibid para 7.25.
- 37 Ibid para 7.25.
- 38 Ibid para 7.26.
- 39 See ibid para 7.27.
- 40 See ibid paras 8.1-8.3.
- 41 See ibid paras 8.4-8.6.
- 42 Ibid para 8.7.
- 43 See ibid para 8.8.
- 44 See ibid para 8.9.

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325. Silence of the accused.

Provisions of the Criminal Justice and Public Order Act 1994¹, which relate to the effect of the silence of the accused or his failure to account for various matters when interviewed or at trial, are applied with modifications² to proceedings³ for offences conducted under the service discipline Acts⁴.

1 As to the Criminal Justice and Public Order Act 1994 see CRIMINAL LAW, EVIDENCE AND PROCEDURE.

2 The provisions applied and modified are contained in the Criminal Justice and Public Order Act 1994 s 34 (as amended) (effect of accused's failure to mention facts when questioned or charged), s 35 (as amended) (effect of accused's silence at trial), s 36 (as amended) (effect of accused's refusal or failure to account for objects, substances or marks), s 37 (as amended) (effect of accused's refusal or failure to account for presence at a particular place), s 38 (as amended) (interpretation) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1552 et seq): see the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 1997, SI 1997/16, art 2(1), Schedule.

3 For the applicable proceedings see the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 1997, SI 1997/16, art 2.

4 See the Criminal Justice and Public Order Act 1994 s 39(1); and the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 1997, SI 1997/16. As to the service discipline Acts see para 302 ante.

UPDATE

325 Silence of the accused

NOTES--SI 1997/16 replaced: Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009, SI 2009/990.

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326. Notification of report.

As soon as a service policeman¹ considers that there is sufficient evidence to justify disciplinary action against the suspect² for an offence under the service discipline Acts³, and there is sufficient evidence for it to succeed, and that the suspect has said all that he wishes to say about the offence, the service policeman must, without delay, cease to question him in relation to that offence⁴. The suspect must be informed either at this stage or when inquiries have been completed that a report will be submitted without delay to his commanding officer and other relevant service authority in respect of the commission of an offence contrary to the service discipline Acts⁵. This must be done in the presence of the appropriate adult⁶ if the suspect is a juvenile or is mentally disordered or mentally handicapped or is incapable of understanding what is being said to him or his replies, unless the suspect has been interviewed in their absence in accordance with certain provisions⁷. When a suspect is informed that he will be reported to his commanding officer and other relevant service authority, he must be cautioned⁸. If at any time after a suspect has been charged with, or informed that he will be reported for, an offence, a service policeman wishes to bring to the notice of that suspect any written statement made by another person, or the content of an interview with another person, he must hand to the suspect a true copy of any such written statement or bring to his attention the content of his interview record, but must say or do nothing to invite any reply or comment save to caution him⁹. The suspect should also be reminded of his right to legal advice¹⁰. If the suspect cannot read, then the service policeman may read it to him¹¹. If the suspect is a juvenile or is mentally disordered or mentally handicapped or is incapable of understanding what is being said to him or his replies, the copy must also be given to, or the interview record brought to the attention of, the appropriate adult¹². Questions relating to an offence may not be put to a suspect after he has been charged with that offence, or informed that he will be reported for it, unless they are necessary for the purposes of preventing or minimising harm or loss to some other person or to the public, or for clearing up an ambiguity in a previous answer or statement, or where it is in the interests of justice that the suspect should have put to him and have an opportunity to comment on information concerning the offence which has come to light since he was charged or informed that he would be reported¹³. Before any such questions are put, the accused must be cautioned¹⁴. A record must be made of anything a suspect says when informed that he will be reported to his commanding officer and other relevant service authority¹⁵. Any questions put after he has been charged or informed that he will be reported, and answers given relating to the offence, must be contemporaneously recorded in writing and the record signed by the accused or, if he refuses, by the interviewing service policeman and any third person present¹⁶. If the questions are tape recorded the arrangements set out in the Code of Practice for the Tape Recording of Service Police Interviews with Suspects¹⁷ apply¹⁸.

1 For the meaning of 'service policeman' see para 318 note 1 ante.

2 For the meaning of 'suspect' see para 318 note 3 ante.

3 As to the service discipline Acts see para 302 ante.

4 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 9.1.

5 Ibid para 9.1.

- 6 For the meaning of 'appropriate adult' see para 318 notes 9, 23 ante.
- 7 See the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 9.1. The text refers to the provisions of Annex B: see para 318 ante.
- 8 See *ibid* para 9.2. For the wording of the caution see para 9.2.
- 9 See *ibid* para 9.3. For the wording of the caution see para 9.3.
- 10 See *ibid* para 9.3. As to the right to legal advice see para 320 ante.
- 11 *Ibid* para 9.3.
- 12 *Ibid* para 9.3.
- 13 *Ibid* para 9.4.
- 14 See *ibid* para 9.4. For the wording of the caution see para 9.4.
- 15 *Ibid* para 9.5.
- 16 *Ibid* para 9.6.
- 17 See para 327 post.
- 18 Code of Practice for the Treatment and Questioning of Persons by the Service Police para 9.6.

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(C) TAPE RECORDING OF SERVICE POLICE INTERVIEWS WITH SUSPECTS

327. Tape recording of interviews with suspects.

Service policemen are required to observe the provisions of the Code of Practice for the Tape Recording of Service Police Interviews with Suspects¹. Tape recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview².

Tape recording must be used for any interview³:

- 146 (1) with a person who has been cautioned in respect of a serious service offence⁴;
- 147 (2) which takes place as a result of a service policeman exceptionally putting further questions to a suspect about an offence described in head (1) above after he has been charged with, or informed that he may be reported for, that offence⁵;
- 148 (3) in which a service policeman wishes to bring to the notice of a person, after he has been charged with, or informed that he may be reported for, an offence described in head (1) above, any written statement made by another person, or the content of an interview after caution with another person⁶.

A service policeman need not tape record the interview⁷ where it is not reasonably practicable to do so because of failure of the equipment or the non-availability of a suitable interview room or recorder and the service policeman considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available⁸, or where it is clear from the outset that no prosecution will ensue⁹.

Where an interview takes place with a person voluntarily attending a service police office and the service policeman has grounds to believe that person has become a suspect, the continuation of the interview must be tape recorded, unless there are reasonable grounds for the continuation of the interview not to be recorded on tape¹⁰.

When the suspect is brought into the interview room, the interviewing service policeman must without delay, and in the sight of the suspect, load the tape recorder with previously unused tapes and set it to record¹¹. The tapes must be unwrapped or otherwise opened in the presence of the suspect¹². The service policeman must then tell the suspect formally about the tape recording and say¹³:

- 149 (a) that the interview is being tape recorded¹⁴;
- 150 (b) his name and rank and the name and rank of any other service policeman present¹⁵;
- 151 (c) the name of the suspect and any other party present (for instance, a legal adviser)¹⁶;
- 152 (d) the date, time of commencement and place of the interview¹⁷;
- 153 (e) that the suspect will be given a notice about what will happen to the tapes¹⁸.

The service policeman must then caution the suspect¹⁹. The service policeman must remind the suspect, where appropriate, of his right to free and independent legal advice and that he can speak to a legal adviser²⁰. The service policeman must then put to the suspect any significant statement or silence²¹ which occurred before the start of the tape recorded interview, and must ask him whether he confirms or denies that earlier statement or silence or whether he wishes to add anything²².

When a suspect who is interviewed after arrest fails or refuses to answer certain questions, or to answer them satisfactorily, after due warning, a court may draw such inferences as appear proper²³ when²⁴:

- 154 (i) a suspect is arrested by a service policeman and there is found on his person, or in or on his clothing or footwear, or otherwise in his possession, or in the place where he was arrested, any objects, marks or substances, or marks on such objects, and the person fails or refuses to account for the objects, marks or substances found²⁵;
- 155 (ii) an arrested person was found by a service policeman at a place at or about the time the offence for which he was arrested is alleged to have been committed, and the person fails or refuses to account for his presence at that place²⁶.

For an inference to be drawn from a suspect's failure or refusal to answer a question about one of these matters or to answer it satisfactorily, the interviewing service policeman must first tell him in ordinary language²⁷:

- 156 (A) what offence he is investigating²⁸;
- 157 (B) what fact he is asking the suspect to account for²⁹;
- 158 (C) that he believes that fact may be due to the suspect's taking part in the commission of the offence in question³⁰;
- 159 (D) that a court may draw a proper inference if he fails or refuses to account for the fact about which he is being questioned³¹;
- 160 (E) that a record is being made of the interview and that it may be given in evidence if he is brought to trial³².

Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his immediate treatment, he should be informed of any relevant consequences and that they are not affected by the caution³³.

The Code of Practice for the Tape Recording of Service Police Interviews with Suspects also makes detailed provision for:

- 161 (aa) interviews with people who are deaf³⁴;
- 162 (bb) the procedure to be followed if objections or complaints are made by the suspect³⁵;
- 163 (cc) changing tapes³⁶;
- 164 (dd) taking a break during an interview³⁷;
- 165 (ee) the failure of recording equipment³⁸;
- 166 (ff) the removal of tapes from the recorder³⁹;
- 167 (gg) the conclusion of the interview⁴⁰;
- 168 (hh) the preparation of documents after the interview⁴¹; and
- 169 (ii) tape security⁴².

1 Code of Practice for the Tape Recording of Service Police Interviews with Suspects para 1.1. The Code must be readily available for consultation by service policemen, suspects and others: para 1.2.

2 Ibid para 2.1. One tape (the master tape) will be sealed before it leaves the presence of the suspect, and a second tape will be used as a working copy: see para 2.2. Only twin-deck machines are to be used: para 2.2.

3 See *ibid* para 3.1. However, tape recording is not required in respect of an interview with a person suspected on reasonable grounds of an offence under the Official Secrets Act 1911 s 1 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 478): Code of Practice for the Tape Recording of Service Police Interviews with Suspects para 3.2. The whole of each interview must be tape recorded, including the taking and reading back of any statement: para 3.5.

4 Ibid para 3.1a.

5 Ibid para 3.1b.

6 Ibid para 3.1c.

7 Ibid para 3.3. In all cases he must make a note in specific terms of the reasons for not tape recording on the form provided: see para 3.3.

8 Ibid para 3.3a.

9 Ibid para 3.3b.

10 See *ibid* para 3.4.

11 Ibid para 4.1.

12 Ibid para 4.1.

13 Ibid para 4.2.

14 Ibid para 4.2a.

15 Ibid para 4.2b.

16 Ibid para 4.2c.

17 Ibid para 4.2d.

18 Ibid para 4.2e.

19 Ibid para 4.3. For the wording of the caution see para 4.3.

20 Ibid para 4.4. The suspect may speak to a legal adviser in accordance with the Code of Practice for the Treatment and Questioning of Persons by the Service Police para 3.7: see para 320 ante.

21 The failure or refusal to answer a question or to answer it satisfactorily. A 'significant' statement or silence means one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt, or failure or refusal to answer a question or to answer it satisfactorily, which might give rise to an inference under the Criminal Justice and Public Order Act 1994 Pt III (ss 31-51) (as amended) (see para 325 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1550 et seq): Code of Practice for the Tape Recording of Service Police Interviews with Suspects para 4.5.

22 See *ibid* para 4.5.

23 The under the Criminal Justice and Public Order Act 1994 ss 36, 37 (both as amended): see para 325 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1553, 1554.

24 See the Code of Practice for the Tape Recording of Service Police Interviews with Suspects para 4.6.

25 Ibid para 4.6a.

26 Ibid para 4.6b.

27 Ibid para 4.7.

28 Ibid para 4.7a.

29 Ibid para 4.7b.

30 Ibid para 4.7c.

31 Ibid para 4.7d.

32 Ibid para 4.7e.

33 Ibid para 4.8. Examples are when his refusal to provide his service particulars may render him liable to arrest, or when his refusal to provide particulars and information in accordance with a statutory requirement, eg under the Road Traffic Act 1988 (see ROAD TRAFFIC), may amount to an offence or may make him liable to arrest: Code of Practice for the Tape Recording of Service Police Interviews with Suspects para 4.8.

34 See ibid para 4.9.

35 See ibid paras 4.10-4.12.

36 See ibid para 4.13.

37 See ibid paras 4.14-4.16.

38 See ibid para 4.17.

39 See ibid para 4.18.

40 See ibid paras 4.19-4.21.

41 See ibid paras 5.1-5.4.

42 See ibid paras 6.1-6.2.

UPDATE

327 Tape recording of interviews with suspects

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(D) IDENTIFICATION OF PERSONS SUSPECTED OF OFFENCES

328. Identification of suspects.

The Code of Practice for the Identification of Persons Suspected of Offences under the Service Discipline Acts applies to service police inquiries into offences and alleged offences under the service discipline Acts¹. The Code provides for the identification of suspects by: (1) witnesses²; (2) fingerprints³; (3) photographs⁴; and (4) body samples, swabs and impressions⁵.

A record must be made of the description of the suspect as first given by a potential witness⁶. Where the identity of the suspect is known to the service police, the methods of identification by witnesses which may be used are⁷: (a) an identification parade⁸; (b) a group identification⁹; (c) a video film¹⁰; or (d) a confrontation¹¹. Where the identity of the suspect is not known to the service police, the methods of identification by witnesses which may be used are street identification and the showing of photographs¹².

1 See the Code of Practice for the Identification of Persons Suspected of Offences under the Service Discipline Acts para 1.1. The Code must be readily available, where practicable, for consultation by service policemen, suspects and others: see para 1.2. As to the service discipline Acts see para 302 ante.

2 See *ibid* paras 2.1-2.23, Annexes A-E.

3 See *ibid* paras 3.1-3.15.

4 See *ibid* paras 4.1-4.7.

5 See *ibid* paras 5.1-5.16.

6 See *ibid* para 2.1.

7 *Ibid* para 2.2.

8 *Ibid* para 2.2a. As to identification parades see paras 2.4-2.7, Annex A.

9 *Ibid* para 2.2b. As to group identification see paras 2.8-2.9, Annex A.

10 *Ibid* para 2.2c. As to video identification see paras 2.10-2.12, Annex B.

11 *Ibid* para 2.2d. As to confrontation see paras 2.13-2.14, Annex C.

12 See *ibid* paras 2.17-2.18, Annex D.

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B. POWERS OF SURVEILLANCE, ENTRY, SEARCH AND SEIZURE

329. Surveillance and covert human intelligence sources.

The Regulation of Investigatory Powers Act 2000 makes detailed provision for and about, amongst other things, the carrying out of surveillance and the use of covert human intelligence sources¹. Designated persons who hold prescribed offices, ranks or positions with the Royal Navy Regulating Branch, the Royal Military Police, the Royal Air Force Police and any of Her Majesty's forces² (or a more senior office, rank or position)³ have power to grant authorisations for the carrying out of directed surveillance⁴ and for the conduct or the use of a covert human intelligence source⁵. The following offices, ranks and positions have been prescribed⁶:

- 170 (1) Provost Marshal in the Royal Navy Regulating Branch⁷;
- 171 (2) Lieutenant Colonel in the Royal Military Police⁸;
- 172 (3) Wing Commander in the Royal Air Force Police⁹;
- 173 (4) Commander in the Royal Navy¹⁰;
- 174 (5) Lieutenant Colonel in the Army¹¹; and
- 175 (6) Wing Commander in the Royal Air Force¹².

Additional offices, ranks and positions have been prescribed for urgent cases¹³.

¹ See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 506 et seq; POLICE vol 36(1) (2007 Reissue) para 489 et seq.

² See the Regulation of Investigatory Powers Act 2000 ss 30, 81(1), Sch 1 paras 1, 6; and POLICE vol 36(1) (2007 Reissue) para 496.

³ See the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, SI 2000/2417, art 2(2), (3).

⁴ *Ie* under the Regulation of Investigatory Powers Act 2000 s 28: see POLICE vol 36(1) (2007 Reissue) para 494.

⁵ *Ie* under *ibid* s 29: see POLICE vol 36(1) (2007 Reissue) para 495.

⁶ See the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, SI 2000/2417, art 2(1).

⁷ See *ibid* art 2(1), Schedule Pt I.

⁸ See *ibid* Schedule Pt I.

⁹ See *ibid* Schedule Pt I.

¹⁰ See *ibid* Schedule Pt I.

¹¹ See *ibid* Schedule Pt I.

¹² See *ibid* Schedule Pt I.

¹³ See *ibid* art 3, Schedule Pt I.

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

329 Surveillance and covert human intelligence sources

TEXT AND NOTES 2-13--SI 2000/2417 replaced and equivalent provision is made by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003, SI 2003/3171, arts 4-11, Schedule Pt I (Schedule amended: SI 2005/1084, SI 2006/594, SI 2006/1874, SI 2006/635, SI 2007/1388, SI 2007/1861, SI 2007/2128, SI 2009/462).

NOTE 2--2000 Act Sch 1 amended: SI 2005/1084.

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330. Power to stop and search persons and vehicles.

As from 30 September 2003, the following provisions have effect¹.

A service policeman²:

- 176 (1) may search³:
 - .8
 - 11. (a) any person who is, or whom the service policeman has reasonable grounds for believing to be, subject to service law⁴;
 - 12. (b) a service vehicle⁵ which is in the charge of any person⁶;
 - 13. (c) any vehicle which is, or which the service policeman has reasonable grounds for believing to be, in the charge of a person subject to service law⁷; or
 - 14. (d) anything which is in or on a service vehicle or a vehicle falling within head (1)(c) above⁸;
 - .9
 - 177 for stolen⁹ or prohibited articles¹⁰, controlled drugs¹¹ or Her Majesty's stores¹²; and
 - 178 (2) may detain for the purpose of such a search¹³:
 - .10
 - 15. (a) any person who is, or whom the service policeman has reasonable grounds for believing to be, subject to service law¹⁴;
 - 16. (b) any person in charge of a service vehicle¹⁵;
 - 17. (c) any service vehicle¹⁶; and
 - 18. (d) any vehicle falling within head (1)(c) above¹⁷.
 - .11

A service policeman may exercise the power to stop and search¹⁸:

- 179 (i) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right, or by virtue of express or implied permission¹⁹;
- 180 (ii) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling or service living accommodation²⁰; and
- 181 (iii) in any premises²¹ which at the time when he proposes to exercise the power are permanently or temporarily occupied or controlled by any of Her Majesty's forces²² but are not service living accommodation²³.

A service policeman does not have power to search a person or vehicle or anything in or on a vehicle unless²⁴:

- 182 (A) he has reasonable grounds for suspecting that he will find stolen or prohibited articles, or Her Majesty's stores that have been unlawfully obtained²⁵; or
- 183 (B) he has reasonable grounds for suspecting²⁶:
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19. (aa) in the case of the search of a person, that the person is in possession of a controlled drug in circumstances in which he commits an offence²⁷ for which the corresponding civil offence²⁸ is an offence under the Misuse of Drugs Act 1971²⁹; or
20. (bb) in the case of the search of a vehicle, that he will find a controlled drug that is in a person's possession in such circumstances³⁰.

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If a person is in a garden or yard occupied with and used for the purposes of a dwelling³¹ or of any service living accommodation³² or on other land so occupied and used, a service policeman may not by virtue of head (i) or head (ii) above search him in the exercise of the power to stop and search unless the service policeman has reasonable grounds for believing that he does not reside in the dwelling or service living accommodation, and that he is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation³³.

If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or of any service living accommodation³⁴ or on other land so occupied and used, a service policeman may not by virtue of head (i) or head (ii) above search the vehicle or anything in or on it in the exercise of the power to stop and search unless the service policeman has reasonable grounds for believing that the person in charge of the vehicle does not reside in the dwelling or service living accommodation, and that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling or service living accommodation³⁵.

If, in the course of a search, a service policeman discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, evidence of an offence³⁶ for which the corresponding civil offence is an offence under the Misuse of Drugs Act 1971, or any of Her Majesty's stores that have been unlawfully obtained, he may seize it³⁷.

The time for which a person or vehicle may be detained for the purposes of a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby³⁸. The power to stop and search is not to be construed as authorising a service policeman to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves³⁹.

1 See the Armed Forces Act 2001 (Commencement No 3) Order 2003, SI 2003/2268.

The provisions of the Armed Forces Act 2001 Pt 2 (ss 2-16) do not limit:

- 42 (1) any power of a service policeman (see note 2 *infra*) or commanding officer to enter and search, or order the entry and search of, premises which are occupied for the purposes of any of Her Majesty's forces, to the extent that the premises do not constitute service living accommodation (s 16(7)(a));
- 43 (2) any power of a commanding officer, otherwise than in connection with the investigation of an offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, service living accommodation (s 16(7)(b));
- 44 (3) any power of a commanding officer, otherwise than in connection with the investigation of an offence or the exercise of any power of arrest, to search a person or to stop and search a service vehicle (s 16(7)(c)); or
- 45 (4) any power of a service policeman or commanding officer to search a service vehicle which is not in the charge of any person (s 16(7)(d)).

For the purposes of s 16(7), 'service vehicle' means a vehicle, vessel, aircraft or hovercraft which belongs to any of Her Majesty's forces, or is in use for the purposes of any of those forces: s 16(8).

As to Code of Practice A (relating to statutory powers of stop and search) see para 317 note 6 *ante*.

2 Armed Forces Act 2001 s 2(2). For the purposes of Pt 2, 'service policeman' means a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police: s

16(1). For the purposes of Pt 2, the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by the Air Force Act 1955 on provost officers are to be taken to be members of the Royal Air Force Police: Armed Forces Act 2001 s 16(6).

In relation to a person who is subject to service law or a vehicle in the charge of such a person, the powers conferred on a service policeman by s 2 (see the text and notes 3-37 *infra*) may also be exercised: (1) by that person's commanding officer; or (2) by any member of Her Majesty's forces who is authorised by that person's commanding officer: s 4(1). However, the power conferred on a commanding officer by virtue of head (1) *supra* may be exercised only by giving orders for the search of a particular person or vehicle: s 4(2). A commanding officer may not give orders by virtue of head (1) *supra* or give authority under head (2) *supra* unless he has reasonable grounds for believing that it is likely that, if the powers conferred by s 2 could not be exercised before the earliest time by which it would be practicable to obtain:

- 46 (a) the assistance of a service policeman; or
- 47 (b) in a case where corresponding powers conferred by the Police and Criminal Evidence Act 1984 s 1 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 860) or any other enactment are exercisable by a member of a United Kingdom police force, the assistance of a member of such a force who is capable of exercising those corresponding powers,

offences against the Army Act 1955 s 70 (as amended; prospectively further amended), the Air Force Act 1955 s 70 (as amended; prospectively further amended) or the Naval Discipline Act 1957 s 42 (as amended; prospectively further amended) (see para 422 *post*) would be committed or persons who have committed such offences would avoid apprehension: see the Armed Forces Act 2001 s 4(3).

Where a power is conferred on any person by or under Pt 2, the person on whom the power is conferred may use reasonable force, if necessary, in the exercise of the power: s 14.

3 Ibid s 2(2)(a).

4 Ibid s 2(2)(a)(i). For the purposes of Pt 2, any reference to a 'person subject to service law' is a reference to:

- 48 (1) a person subject to naval discipline, military law or air force law (Armed Forces Act 2001 s 16(2)(a)); or
- 49 (2) any other person to whom any provisions of the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended) or the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended) apply because he is a person falling within:
 - 1. (a) the Army Act 1955 s 209(1) or s 209(2) (as amended; prospectively further amended), the Air Force Act 1955 s 209(1) or s 209(2) (as amended; prospectively further amended) (application of Act to civilians: see para 311 *ante*) (Armed Forces Act 2001 s 16(2)(b)(i)); or
 - 2
 - 2. (b) the Naval Discipline Act 1957 s 118(1) or s 118(2) (as amended; prospectively further amended) (application of Act to civilians: see para 311 *ante*) (Armed Forces Act 2001 s 16(2)(b)(ii)).

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The provisions of Pt 2 must, to such extent and subject to such modifications as may be prescribed by regulations made by the Defence Council, apply to persons embarked as passengers on board Her Majesty's ships or Her Majesty's aircraft (not being persons who are subject to service law) as it applies to persons subject to service law: s 16(3). Such regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 *ante*. As to the meaning of 'Her Majesty's ships' see para 21 note 13 *ante*; definition applied by s 16(4). As to the meaning of 'Her Majesty's aircraft' see para 21 note 13 *ante*; definition applied by s 16(4).

5 For these purposes, 'service vehicle' means a vehicle which belongs to any of Her Majesty's forces, or is in use for the purposes of any of those forces: *ibid* s 2(10). The provisions of ss 2, 3 apply to vessels, aircraft and hovercraft as they apply to vehicles: s 3(5).

6 Ibid s 2(2)(a)(ii).

7 Ibid s 2(2)(a)(iii).

8 Ibid s 2(2)(a)(iv).

9 For the purposes of *ibid* Pt 2, 'stolen', in relation to an article, has the same meaning as it has by virtue of the Theft Act 1968 s 24 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 303) in the provisions of that Act relating to goods which have been stolen: Armed Forces Act 2001 s 16(1).

10 An article is 'prohibited' for the purposes of *ibid* s 2 if it is:

50 (1) an offensive weapon other than one in the possession of a person who is permitted to have it in his possession for the purposes of any of Her Majesty's forces (s 2(8)(a)); or

51 (2) an article:

3. (a) made or adapted for use in the course of or in connection with an offence specified in s 2(9) or an offence as respects which the corresponding civil offence is an offence so specified (s 2(8)(b)(i)); or

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4. (b) intended by the person having it with him for such use by him or by some other person (s 2(8)(b)(ii)).

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The specified offences are: (i) burglary; (ii) theft; (iii) offences under the Theft Act 1968 s 12 (as amended) (taking motor vehicle or other conveyance without authority: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 298); and (iv) offences under s 15 (obtaining property by deception: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 310): Armed Forces Act 2001 s 2(9).

'Offensive weapon' means any article made or adapted for use for causing injury to persons, or intended by the person having it with him for such use by him or by some other person: s 2(10).

11 For the purposes of *ibid* Pt 2, 'controlled drug' has the same meaning as in the Misuse of Drugs Act 1971 s 2 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) para 238): Armed Forces Act 2001 s 16(1).

12 *Ibid* s 2(2)(a). For these purposes, 'Her Majesty's stores' has the same meaning as in the Public Stores Act 1875 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 542): Armed Forces Act 2001 s 2(10).

13 *Ibid* s 2(2)(b).

14 *Ibid* s 2(2)(b)(i).

15 *Ibid* s 2(2)(b)(ii).

16 *Ibid* s 2(2)(b)(iii).

17 *Ibid* s 2(2)(b)(iv).

18 *Ibid* s 2(1). The Secretary of State may by order make provision, in relation to the search of persons or vehicles under s 2 (whether carried out by service policemen or by other persons by virtue of s 4), which is equivalent to that made by any provision of:

52 (1) the Police and Criminal Evidence Act 1984 s 2(1)-(7), (9)(b) (search, etc: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 864-865); and

53 (2) s 3 (duty to make records concerning searches: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 866),

subject to such modifications as the Secretary of State thinks fit: Armed Forces Act 2001 s 3(3). Such an order may, in particular, apply any of the provisions mentioned in heads (1) and (2) *supra* subject to modifications specified in the order: s 3(4). In exercise of this power, the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, has been made. As to the Secretary of State see para 2 *ante*.

The provisions of the Armed Forces Act 2001 s 2 do not limit the powers exercisable on any premises if, or to the extent that, the premises are being used for holding persons in custody under any of the services Acts, or for the accommodation of persons serving military, air force or naval sentences of detention or imprisonment: s 3(6). For the purposes of Pt 2, 'the services Acts' means the Army Act 1955, the Air Force Act 1955, and the Naval Discipline Act 1957: Armed Forces Act 2001 s 16(1).

19 *Ibid* s 2(1)(a).

20 *Ibid* s 2(1)(b). For the purposes of Pt 2, 'service living accommodation' means:

- 54 (1) any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his family, as living accommodation or as a garage (ss 15(1)(a), 16(1));
- 55 (2) any other room, structure or area (whether on land or on a vessel) which is occupied for the purposes of any of Her Majesty's forces and is used for the provision of sleeping accommodation for one or more persons subject to service law (ss 15(1)(b), 16(1)); or
- 56 (3) any locker which is provided by any of Her Majesty's forces for personal use by a person subject to service law in connection with his sleeping accommodation, but is not in a room, structure or area falling within head (2) supra (ss 15(1)(c), 16(1)).

However, premises are not service living accommodation for the purposes of Pt 2 if, or to the extent that, they are being used for holding persons in custody under any of the services Acts, or for the accommodation of persons serving military, air-force or naval sentences of detention or imprisonment: ss 15(2), 16(1).

21 For the purposes of *ibid* Pt 2, 'premises' includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft, and any tent or movable structure: s 16(1).

22 For the purposes of *ibid* Pt 2, 'Her Majesty's forces' does not include any Commonwealth force (see para 20 ante): s 16(1). For the meaning of 'Commonwealth force' see para 20 note 6 ante; definition applied by s 16(1).

23 *Ibid* s 2(1)(c).

24 See *ibid* s 2(3).

25 *Ibid* s 2(3)(a).

26 *Ibid* s 2(3)(b).

27 *Ie* an offence against the Army Act 1955 s 70 (as amended; prospectively further amended), the Air Force Act 1955 s 70 (as amended; prospectively further amended) or the Naval Discipline Act 1957 s 42 (as amended; prospectively further amended): see para 422 post.

28 For the purposes of the Armed Forces Act 2001 Pt 2, 'the corresponding civil offence', in relation to an offence against the Army Act 1955 s 70 (as amended; prospectively further amended), the Air Force Act 1955 s 70 (as amended; prospectively further amended) or the Naval Discipline Act 1957 s 42 (as amended; prospectively further amended) (see para 422 post), means the civil offence (within the meaning of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957) the commission of which constitutes an offence under that provision: see the Armed Forces Act 2001 s 16(1).

29 *Ibid* s 2(3)(b)(i). See generally MEDICINAL PRODUCTS AND DRUGS.

30 *Ibid* s 2(3)(b)(ii).

31 For the purposes of *ibid* s 2(4), (5), 'dwelling' does not include any dwelling which is permanently or temporarily occupied or controlled by any of Her Majesty's forces: s 2(6).

32 *Ie* falling within *ibid* s 15(1)(a): see note 20 supra.

33 *Ibid* s 2(4).

34 See note 32 supra.

35 Armed Forces Act 2001 s 2(5). See note 31 supra.

36 See note 27 supra.

37 Armed Forces Act 2001 s 2(7).

38 See *ibid* s 3(1).

39 *Ibid* s 3(2).

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

330 Power to stop and search persons and vehicles

TEXT AND NOTES--Armed Forces Act 2001 ss 2-4, 14-16 repealed: Armed Forces Act 2006 Sch 17. As to the power to stop and search, see now the Armed Forces Act 2006 ss 75-77. As to the places in which the powers under ss 75, 76 may be exercised, see s 78; and as to the limitation on searching persons or vehicles in certain gardens etc, see s 79. Section 80 sets out the safeguards with regard to the conduct of the search. The Secretary of State has the power to make further provision about searches under ss 75, 76: see s 81. As to the provisions which have been made, see the Armed Forces (Powers of Stop, Search, Seizure and Retention) Order 2009, SI 2009/2056. The provisions of the Armed Forces Act 2006 Pt 3 Ch 2 (ss 75-82) which apply to vehicles also apply to ships and aircraft in the same way: see s 82. The power of a commanding officer or service policemen to enter and search service premises, other than service living accommodation, and service vehicles not in anybody's charge at the time are unaffected by the provisions in Pt 3 (ss 67-97): see s 95. For the meaning of 'service living accommodation' and 'premises' see s 96. Where a power is conferred on any person by or under Pt 3, he may use reasonable force, if necessary, in the exercise of the power: s 97.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 18--SI 2003/2273 amended: SI 2006/3244, SI 2007/1861, SI 2008/1698.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(v) Investigation of Offences/B. POWERS OF SURVEILLANCE, ENTRY, SEARCH AND SEIZURE/331. Power of judicial officer and commanding officer to authorise entry and search of premises.

331. Power of judicial officer and commanding officer to authorise entry and search of premises.

As from 30 September 2003, the following provisions have effect¹.

If, on an application made by a service policeman², a judicial officer³ is satisfied that there are reasonable grounds for believing⁴:

- 184 (1) that a specified offence⁵ has been committed⁶; and
- 185 (2) that there is on relevant residential premises⁷ specified in the application material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence⁸; and
- 186 (3) that the material is likely to be relevant evidence⁹; and
- 187 (4) that it does not consist of or include items subject to legal privilege¹⁰, excluded material¹¹ or special procedure material¹²; and
- 188 (5) that any of the following conditions apply¹³:

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- 21. (a) that it is not practicable to communicate with any person entitled to grant entry to the premises¹⁴;
- 22. (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence¹⁵;
- 23. (c) that entry to the premises will not be granted unless a warrant is produced¹⁶;
- 24. (d) in the case of service living accommodation¹⁷, that the person for whom it is provided will not agree to grant access to it unless a warrant is produced or that it is not practicable to communicate with him¹⁸;
- 25. (e) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them¹⁹,

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he may issue a warrant authorising a service policeman to enter and search the premises²⁰. A service policeman may seize and retain anything for which a search has been so authorised²¹.

The Secretary of State may by order authorise the use, in connection with any application to a judicial officer for a warrant²², of live television links or similar arrangements, and make provision, in relation to warrants issued to service policemen or entry and search under such a warrant, which is equivalent to that made by any provision of the Police and Criminal Evidence Act 1984 which relates to the issue to constables of warrants to enter and search premises²³, subject to such modifications as the Secretary of State thinks fit²⁴.

The Secretary of State may by order enable a service policeman to obtain access to excluded material or special procedure material on relevant residential premises, for the purposes of an investigation of a specified offence²⁵, by making an application in accordance with the order to a judicial officer²⁶. Such an order may in particular provide for any provision of the Police and Criminal Evidence Act 1984 which relates to applications by constables to circuit judges for access to excluded material or special procedure material²⁷ to apply with specified

modifications for the purposes of the order, and authorise the use, in connection with any application made by virtue of the order, of live television links or similar arrangements²⁸.

If an officer has reasonable grounds for believing²⁹:

- 189 (i) that the conditions specified in heads (1) to (5) above are satisfied in relation to service living accommodation of a person as respects whom the officer is commanding officer³⁰, or other premises occupied as a residence (alone or with other persons) by a person who is subject to service law and as respects whom the officer is commanding officer³¹; and
- 190 (ii) that it is likely that, if no search could be carried out before the earliest time by which it would be practicable for a service policeman to obtain and execute a warrant³² authorising the entry and search of the premises, or, in a case where a member of a United Kingdom police force³³ could obtain a warrant³⁴ authorising the entry and search of the premises, for a member of such a force to obtain such a warrant, the purpose of the search would be frustrated or seriously prejudiced³⁵,

the officer may authorise a service policeman or any other member of Her Majesty's forces to enter and search the premises³⁶. An authorised person may seize and retain anything for which such a search was authorised³⁷, and where this occurs the officer who authorised the search must as soon as practicable request a judicial officer to undertake a review of the search and of the seizure and retention of anything seized and retained during it³⁸.

1 See the Armed Forces Act 2001 (Commencement No 3) Order 2003, SI 2003/2268. As to Code of Practice B (relating to statutory powers for the entry and search of premises and the seizure of property) see para 317 note 6 ante.

2 For the meaning of 'service policeman' see para 330 note 2 ante.

3 For the purposes of the Armed Forces Act 2001 Pt 2, 'judicial officer' means a judicial officer appointed under the Army Act 1955 s 75L (as added and amended), the Air Force Act 1955 s 75L (as added and amended) or the Naval Discipline Act 1957 s 47M (as added and amended) (see para 341 note 3 post): Armed Forces Act 2001 s 16(1).

4 Ibid s 5(1).

5 The specified offences are:

57 (1) any offence against the Army Act 1955 s 70 (as amended; prospectively further amended), the Air Force Act 1955 s 70 (as amended; prospectively further amended) or the Naval Discipline Act 1957 s 42 (as amended; prospectively further amended) (see para 422 post) for which the corresponding civil offence is, or if it were committed in England and Wales would be, a serious arrestable offence for the purposes of the Police and Criminal Evidence Act 1984 (Armed Forces Act 2001 s 5(2)(a));

58 (2) any offence against the Army Act 1955 s 24 (as substituted and amended) (see paras 392-393 post), s 25 (as substituted and amended) (see para 393 post), s 26 (as substituted and amended) (see para 394 ante), s 30 (as amended) (see para 398 post), s 31 (as amended) (see para 399 post), s 32 (as amended) (see para 399 post), s 37 (as substituted) (see para 404 post), s 48A (as added) (see para 409 post) or s 49 (see para 409 post), the Air Force Act 1955 s 24 (as substituted and amended) (see paras 392-393 post), s 25 (as substituted and amended) (see para 393 post), s 26 (as substituted and amended) (see para 394 post), s 30 (as amended) (see para 398 post), s 31 (as amended) (see para 399 post), s 32 (as amended) (see para 399 post), s 37 (as substituted) (see para 404 post), s 48A (as added) (see para 409 post) or s 49 (see para 409 post), or the Naval Discipline Act 1957 s 2 (as substituted and amended) (see paras 392-393 post), s 3 (as substituted and amended) (see para 393 post), s 4 (as substituted and amended) (see para 394 post), s 5 (as substituted) (see para 398 post), s 9 (as amended) (see para 399 post), s 10 (as amended) (see para 399 post), s 16 (as amended) (see para 404 post), s 19 (as amended) (see para 409 post) or s 20 (as amended) (see para 409 post) (Armed Forces Act 2001 s 5(2)(b));

59 (3) any offence specified for the purposes of s 5(2) in an order made by the Secretary of State (s 5(2)(c));

60 (4) any offence against the Army Act 1955, the Air Force Act 1955 or under the Naval Discipline Act 1957 whose commission:

5. (a) has led to any of the following consequences: (i) serious harm to the security of the state or to public order; (ii) serious interference with the administration of justice or with the investigation of offences or of a particular offence; (iii) the death of any person; (iv) serious injury to any person; (v) substantial financial gain to any person; (vi) serious financial loss to any person; (vii) the undermining of discipline or morale among members of any of Her Majesty's forces (Armed Forces Act 2001 s 5(2)(d)(i), (5)); or

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6. (b) is intended or is likely to lead to any of those consequences (s 5(2)(d)(ii)).

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For the meaning of 'the corresponding civil offence' see para 330 note 28 ante. As to the meaning of 'Her Majesty's forces' see para 330 note 22 ante. For the purposes of head (iv) supra, 'injury' includes any disease and any impairment of a person's physical or mental condition: s 5(6). For the purposes of head (vi) supra, loss is serious if, having regard to all the circumstances, it is serious for the person who suffers it: s 5(7). As to the Secretary of State see para 2 ante.

6 Ibid s 5(1)(a).

7 'Relevant residential premises' means: (1) service living accommodation; or (2) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law, or a person who is suspected of having committed while subject to service law an offence in relation to which the warrant is sought: *ibid* ss 5(8), 6(3). For the meaning of 'service living accommodation' see para 330 note 20 ante. For the meaning of 'person subject to service law' see para 330 note 4 ante.

8 Ibid s 5(1)(b).

9 Ibid s 5(1)(c). 'Relevant evidence', in relation to an offence, means anything that would be admissible in evidence at a trial for the offence: s 5(9).

10 For the purposes of *ibid* Pt 2, 'items subject to legal privilege' means: (1) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client; (2) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and (3) items enclosed with or referred to in such communications and made: (a) in connection with the giving of legal advice; or (b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them: see the Police and Criminal Evidence Act 1984 ss 10(1), 118(1); definition applied by the Armed Forces Act 2001 s 16(1). However, items held with the intention of furthering a criminal purpose are not items subject to legal privilege: see the Police and Criminal Evidence Act 1984 ss 10(1), 118(1); definition applied by the Armed Forces Act 2001 s 16(1).

11 For the purposes of *ibid* Pt 2, 'excluded material' has the same meaning as in the Police and Criminal Evidence Act 1984 s 11 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 875): Armed Forces Act 2001 s 16(1).

12 Ibid s 5(1)(d). For the purposes of Pt 2, 'special procedure material' has the same meaning as in the Police and Criminal Evidence Act 1984 s 14 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 876): Armed Forces Act 2001 s 16(1).

13 See *ibid* s 5(1)(e).

14 Ibid s 5(4)(a).

15 Ibid s 5(4)(b).

16 Ibid s 5(4)(c).

17 *le* falling within *ibid* s 15(1)(b) or s 15(1)(c): see para 330 note 20 ante.

18 Ibid s 5(4)(d).

19 Ibid s 5(4)(e).

20 Ibid s 5(4).

21 Ibid s 5(3).

22 Ie under ibid s 5.

23 Ie any provision of the Police and Criminal Evidence Act 1984 ss 15, 16 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 872, 880-882, 902.

24 Armed Forces Act 2001 s 5(10). In exercise of this power, the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, has been made.

25 Ie an offence to which the Armed Forces Act 2001 s 5 applies: see note 5 supra.

26 See ibid s 6(1). In exercise of this power, the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, has been made.

27 Ie any provision of the Police and Criminal Evidence Act 1984 Sch 1 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 877-879.

28 Armed Forces Act 2001 s 6(2).

29 Ibid s 7(1).

30 For the purposes of ibid Pt 2, 'commanding officer':

61 (1) in relation to a person subject to military law, means the officer who would be that person's commanding officer for the purposes of the Army Act 1955 s 82 (as amended) (see paras 353-354 post) if he were charged with an offence (Armed Forces Act 2001 s 16(5)(a));

62 (2) in relation to a person subject to air force law, means the officer who would be that person's commanding officer for the purposes of the Air Force Act 1955 s 82 (as amended) (see paras 353-354 post) if he were charged with an offence (Armed Forces Act 2001 s 16(5)(b));

63 (3) in relation to a person subject to the Naval Discipline Act 1957 or a person falling within the Armed Forces Act 2001 s 16(2)(b)(ii) (see para 330 note 4 ante), means the officer in command of the ship or naval establishment to which he belongs, or any other person who by virtue of regulations under the Naval Discipline Act 1957 s 52E (as added and amended) (see para 348 post) would be able to exercise the powers conferred by that Act on a commanding officer in relation to that person if he were charged with an offence (see the Armed Forces Act 2001 s 16(5)(c));

64 (4) in relation to a person falling within s 16(2)(b)(i) (see para 330 note 4 ante), means the person who is by virtue of regulations of the Defence Council made for the purposes of the Army Act 1955 s 209(3)(f) (as amended) or the Air Force Act 1955 s 209(3)(f) (as amended) the commanding officer for the purposes of the Army Act 1955 Pt II (ss 24-143) (as amended) or the Air Force Act 1955 Pt II (ss 24-143) (as amended) in relation to him (see the Armed Forces Act 2001 s 16(5)(d));

65 (5) in relation to a person falling within s 16(3) (see para 330 ante), means such officer as may be determined by or under regulations of the Defence Council made for the purposes of s 16(3) (see s 16(5)(e)).

As to the Defence Council see para 2 ante.

31 Ibid s 7(1)(a).

32 Ie under ibid s 5: see the text and notes 1-13 supra.

33 For the purposes of ibid Pt 2, 'United Kingdom police force' means any of the following: (1) the Ministry of Defence Police (see POLICE vol 36(1) (2007 Reissue) para 120 et seq); (2) any police force maintained under the Police Act 1996 s 2 (police forces in England and Wales outside London: see POLICE vol 36(1) (2007 Reissue) para 136); (3) the metropolitan police force (see POLICE vol 36(1) (2007 Reissue) para 137); (4) the City of London police force (see POLICE vol 36(1) (2007 Reissue) para 138); (5) any police force maintained under or by virtue of the Police (Scotland) Act 1967 s 1 (as amended); or (6) the Police Service of Northern Ireland: Armed Forces Act 2001 s 16(1).

34 lie under the Police and Criminal Evidence Act 1984 s 8 (as amended) or any other enactment: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 873.

35 Armed Forces Act 2001 s 7(1)(b).

36 Ibid s 7(1). An officer may not authorise a person other than a service policeman to exercise the powers conferred by s 7(1) unless the premises to be searched consist of service living accommodation falling within s 15(1)(b) or s 15(1)(c) (see para 330 note 20 ante), and it is likely that, if no search could be carried out before the earliest time by which it would be practicable to obtain the assistance of a service policeman, the purpose of the search would be frustrated or seriously prejudiced: s 7(2).

37 See ibid s 7(3).

38 See ibid s 8(1). In relation to a review under s 8, a judicial officer has such powers and duties as may be prescribed by the Secretary of State by order: s 8(2). In exercise of this power, the Armed Forces (Review of Search and Seizure) Order 2003, SI 2003/2272, has been made.

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

331 Power of judicial officer and commanding officer to authorise entry and search of premises

TEXT AND NOTES--Armed Forces Act 2001 ss 5-8, 16 repealed: Armed Forces Act 2006 Sch 17. See now the Armed Forces Act 2006 s 83 (power of judge advocate to authorise entry and search), s 84 (definition of terms used in s 83), s 85 (power to make supplementary provision for the use of live television links (or similar arrangements) for hearing an application for a warrant), s 86 (power to make provision as to access to excluded material), s 87 (power of commanding officer to authorise entry and search by service policeman), s 88 (power of commanding officer to authorise entry and search by other persons), s 89 (review by judge advocate of certain searches under s 87 or 88), and s 360 (meaning of 'commanding officer'). See also the Armed Forces (Powers of Stop, Search, Seizure and Retention) Order 2009, SI 2009/2056.

NOTES 24, 26--SI 2003/2273 amended: see PARA 330 NOTE 18.

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332. Entry for purpose of arrest.

As from 30 September 2003, the following provisions have effect¹.

A service policeman² may enter and search any relevant residential premises³ for certain purposes⁴, namely:

- 191 (1) arresting a person under any of the services Acts⁵; or
- 192 (2) saving life or limb or preventing serious damage to property⁶.

A service policeman may enter and search any premises which are occupied as a residence (alone or with other persons) by a person to whom this provision applies⁷, for the purpose of arresting that person under any of the services Acts⁸.

Except for the purpose specified in head (2) above, the powers of entry and search for the purpose of arrest⁹:

- 193 (a) are only exercisable if the service policeman has reasonable grounds for believing that the person whom he is seeking is on the premises¹⁰; and
- 194 (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling, and any such dwelling in which the service policeman has reasonable grounds for believing that the person whom he is seeking may be¹¹.

An officer may authorise a member of Her Majesty's forces¹² who is not a service policeman to exercise, in relation to premises consisting of service living accommodation of a person as respects whom the officer is commanding officer¹³, or other premises occupied as a residence (alone or with other persons) by a person who is subject to service law and as respects whom the officer is commanding officer, the power to enter and search any relevant residential premises for the purposes in heads (1) and (2) above conferred on a service policeman¹⁴.

An officer may not authorise a person other than a service policeman to exercise the power conferred by head (1) above unless¹⁵:

- 195 (i) the offence in respect of which the arrest is to be made is a specified offence¹⁶; and
- 196 (ii) the officer has reasonable grounds for believing that, if the arrest could not be made before the earliest time by which it would be practicable to obtain¹⁷:

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- 26. (A) the assistance of a service policeman¹⁸; or
- 27. (B) in a case where the powers conferred by the Police and Criminal Evidence Act 1984 relating to entry for purposes of arrest¹⁹ are exercisable by a member of a United Kingdom police force²⁰, the assistance of a member of such a force capable of exercising them²¹,

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197 the person to be arrested might evade arrest, conceal, damage, alter or destroy evidence or be a danger to himself or to others, or discipline or morale among members of any of Her Majesty's forces might be undermined²².

An officer may not authorise a person other than a service policeman to exercise the power conferred by head (2) above in relation to premises occupied as a residence (alone or with other persons) by a person who is subject to service law²³ unless it is not practicable to obtain the assistance of a service policeman in time to take the necessary action to save life or limb or prevent serious damage to property²⁴.

The Defence Council²⁵ may by regulations provide for the delegation by a commanding officer of his functions under these provisions²⁶.

1 See the Armed Forces Act 2001 (Commencement No 3) Order 2003, SI 2003/2268.

2 For the meaning of 'service policeman' see para 330 note 2 ante.

3 'Relevant residential premises' means: (1) service living accommodation (Armed Forces Act 2001 s 9(2)(a)); or (2) other premises occupied as a residence (alone or with other persons) by a person who is subject to service law (s 9(2)(b)). For the meaning of 'service living accommodation' see para 330 note 20 ante. As to the meaning of 'premises' see para 330 note 21 ante. For the meaning of 'person subject to service law' see para 330 note 4 ante.

4 Ibid s 9(1).

5 Ibid s 9(1)(a). For the meaning of 'the services Acts' see para 330 note 18 ante.

6 Ibid s 9(1)(b). This provision is expressed to be subject to s 9(2)-(10): see the text and notes 7-26 infra.

7 Ie a person in relation to whom the power of arrest under any of the services Acts is exercisable only by virtue of the Army Act 1955 s 131 (as amended), the Air Force Act 1955 s 131 (as amended) or the Naval Discipline Act 1957 s 51 (as amended) (see para 335 post): Armed Forces Act 2001 s 9(4).

8 Ibid s 9(3). This provision is expressed to be subject to s 9(4)-(10) and without prejudice to any other enactment: see the text and note 7 supra, and the text and notes 9-26 infra.

9 Ie conferred by ibid s 9. The power of search conferred by s 9 is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised: s 9(6).

10 Ibid s 9(5)(a).

11 Ibid s 9(5)(b).

12 As to the meaning of 'Her Majesty's forces' see para 330 note 22 ante.

13 For the meaning of 'commanding officer' see para 331 note 30 ante.

14 See the Armed Forces Act 2001 s 9(7). This provision is expressed to be subject to s 9(8), (9): see the text and notes 15-24 infra.

15 Ibid s 9(8).

16 See ibid s 9(8)(a). The text refers to an offence to which s 5 applies: see para 331 ante.

17 Ibid s 9(8)(b).

18 Ibid s 9(8)(b)(i).

19 Ie the powers conferred by the Police and Criminal Evidence Act 1984 s 17(1)(b) or s 17(1)(c) (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 884.

20 For the meaning of 'United Kingdom police force' see para 331 note 33 ante.

21 See the Armed Forces Act 2001 s 9(8)(b)(ii).

22 Ibid s 9(8)(b).

23 Ie premises falling within ibid s 9(2)(b): see note 3 supra.

24 See ibid s 9(9).

25 As to the Defence Council see para 2 ante.

26 See the Armed Forces Act 2001 s 9(10). Such regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work.

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

332 Entry for purpose of arrest

TEXT AND NOTES--Armed Forces Act 2001 s 9 repealed: Armed Forces Act 2006 Sch 17. As to entry for purpose of arrest by a service policeman, see the Armed Forces Act 2006 s 90, and as to entry for purpose of arrest by other persons, see s 91.

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333. Search upon arrest.

As from 30 September 2003, the following provisions have effect¹.

A service policeman² or the person exercising the power of arrest may search a person arrested under any of the services Acts³ if the service policeman or, as the case may be, the person making the arrest has reasonable grounds for believing that the arrested person may present a danger to himself or others⁴. Any person searching another person in the exercise of this power may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person⁵.

A service policeman also has power to search the arrested person for anything⁶ which he might use to assist him to escape from custody, or which might be evidence relating to an offence⁷. A service policeman may not search a person in the exercise of this power unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything that is subject to search⁸. This power to search is only a power to search to the extent that is reasonably required for the purpose of discovering anything that is subject to search⁹. A service policeman or authorised person¹⁰ searching a person in the exercise of this power may seize and retain anything he finds, other than an item subject to legal privilege¹¹, if he has reasonable grounds for believing that the person searched might use it to assist him to escape from lawful custody, or that it is evidence of an offence or has been obtained in consequence of the commission of an offence¹².

Where a person ('the arrested person') is to be or has been arrested under any of the services Acts by a person other than a service policeman, the commanding officer¹³ of the arrested person¹⁴:

- 198 (1) may, if the commanding officer has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search, order the person exercising the power of arrest, on or after exercising the power, to search the arrested person for anything that is subject to search¹⁵; or
- 199 (2) may authorise the person exercising the power of arrest, on or after exercising the power, to search the arrested person for anything that is subject to search¹⁶.

This power to search is only a power to search to the extent that is reasonably required for the purpose of discovering anything that is subject to search¹⁷. A service policeman or authorised person searching a person in the exercise of this power may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that the person searched might use it to assist him to escape from lawful custody, or that it is evidence of an offence or has been obtained in consequence of the commission of an offence¹⁸.

A commanding officer may not order or authorise the search of an arrested person under head (1) or head (2) above unless he has reasonable grounds for believing that it is likely that, if the search could not be carried out before the earliest time by which it would be practicable to obtain assistance from¹⁹:

- 200 (a) a service policeman²⁰; or

201 (b) in a case where the powers conferred by the Police and Criminal Evidence Act 1984 relating to search upon arrest²¹ are exercisable by a member of a United Kingdom police force²², a member of such a force capable of exercising those powers²³,

the person who is to be or has been arrested would escape from custody or conceal, alter or destroy evidence²⁴. A person authorised under head (2) above may not search a person in the exercise of the power conferred by head (2) above unless he has reasonable grounds for believing that the arrested person may have concealed on him anything that is subject to search²⁵.

The Secretary of State may by order make provision, in relation to premises in which a person was when or immediately before he was arrested under any of the services Acts, which is equivalent to that made by civilian law²⁶ relating to the power to enter and search premises, subject to such modifications as the Secretary of State thinks fit²⁷.

The Secretary of State may by order make provision equivalent to that made by civilian law²⁸ in respect of entry and search after arrest and seizure²⁹.

1 See the Armed Forces Act 2001 (Commencement No 3) Order 2003, SI 2003/2268.

2 For the meaning of 'service policeman' see para 330 note 2 ante.

3 For the meaning of 'the services Acts' see para 330 note 18 ante.

4 Armed Forces Act 2001 s 10(1). The power conferred by s 10(1), s 10(2) (see the text and notes 6-7 infra) or s 10(5) (see the text and notes 13-16 infra) is not to be construed as authorising the person exercising the power to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves, but the power does authorise the search of a person's mouth: s 10(9).

5 Ibid s 10(10).

6 For the purposes of ibid s 10(4)-(15), a thing is 'subject to search' if it is something for which a search by a service policeman is permitted under s 10(2) (see the text and note 7 infra): s 10(3).

7 Ibid s 10(2). This provision is expressed to be subject to s 10(4), (8), (9): see note 4 supra; and the text to notes 8-9 infra.

8 See ibid s 10(4).

9 See ibid s 10(8).

10 'Authorised person' means a person ordered under ibid s 10(5)(a) or authorised under s 10(5)(b) (see the text to note 16 infra): s 10(12).

11 For the meaning of 'items subject to legal privilege' see para 331 note 10 ante.

12 See the Armed Forces Act 2001 s 10(11).

13 For the meaning of 'commanding officer' see para 331 note 30 ante. The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under these provisions: ibid s 10(15). Such regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

14 See ibid s 10(5). This provision is expressed to be subject to s 10(6)-(9): see note 4 supra, and the text and notes 17, 19-25 infra.

15 Ibid s 10(5)(a).

16 Ibid s 10(5)(b).

17 See ibid s 10(8).

18 See *ibid* s 10(11).

19 *Ibid* s 10(6).

20 *Ibid* s 10(6)(a).

21 *Ie* the powers conferred by the Police and Criminal Evidence Act 1984 s 32 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 936.

22 For the meaning of 'United Kingdom police force' see para 331 note 33 ante.

23 Armed Forces Act 2001 s 10(6)(b).

24 *Ibid* s 10(6).

25 See *ibid* s 10(7).

26 *Ie* any of the provisions of the Police and Criminal Evidence Act 1984 s 32 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 936.

27 See the Armed Forces Act 2001 s 10(13). This power includes, in particular, power to apply any provision of the Police and Criminal Evidence Act 1984 s 32 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 936) relating to the power to enter and search premises, subject to modifications specified in the order: Armed Forces Act 2001 s 10(14). In exercise of this power, the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, has been made. As to the Secretary of State see para 2 ante.

28 *Ie* equivalent to that made by the Police and Criminal Evidence Act 1984 ss 18-22 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 885-889.

29 See the Armed Forces Act 2001 s 11. In exercise of this power, the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, has been made.

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

333 Search upon arrest

TEXT AND NOTES--Armed Forces Act 2001 ss 10, 11 repealed: Armed Forces Act 2006 Sch 17. As to search upon arrest by service policemen, and other persons exercising the power of arrest, see now the Armed Forces Act 2006 ss 70-72. For provision as to seizure and retention after search upon arrest, see s 73; and as to the power to make provision conferring the power to search the premises at which a person was arrested, see s 74. See also the Armed Forces (Powers of Stop, Search, Seizure and Retention) Order 2009, SI 2009/2056.

As to the power of the Secretary of State to make provision equivalent to that made by civilian law in respect of entry and search after arrest and seizure see ss 92, 93. As to the regulations so made, see SI 2009/2056.

NOTES 27, 29--SI 2003/2273 amended: see PARA 330 NOTE 18.

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334. Property in possession of service police or commanding officer.

As from a day to be appointed, the following provisions have effect¹.

The Secretary of State may by regulations make provision with respect to the disposal of property which has come into the possession of a service policeman² or a person's commanding officer³ in connection with the investigation of an offence⁴.

The regulations may, in particular⁵:

202 (1) enable a court-martial, standing civilian court or judicial officer⁶ to make an order for the delivery of the property to the person appearing to the court or judicial officer to be the owner of the property or, if the owner cannot be ascertained, to make such order with respect to the property as the court or judicial officer thinks fit⁷;

203 (2) enable the commanding officer of a person charged with an offence against any of the services Acts⁸:

.18

28. (a) to determine that any property seized under Part 2 of the Armed Forces Act 2001 in connection with the investigation of an offence be delivered to the person appearing to the commanding officer to be the owner of the property⁹; or

29. (b) if the owner cannot be ascertained, to make such other determination with respect to the delivery of the property as the commanding officer considers appropriate¹⁰;

.19

204 (3) enable the commanding officer of a person in whose possession the property was before it was seized under Part 2 of the Armed Forces Act 2001, or who claims to be the owner of the property, to determine that it should be delivered to that person¹¹;

205 (4) make provision as to appeals against orders made by virtue of head (1) above and determinations made by virtue of head (2) or head (3) above¹²; and

206 (5) provide that, on the expiration of a specified period from the making of an order by virtue of head (1) above, the right of any person to take proceedings for the recovery of the property is to cease¹³.

A determination made by virtue of head (2) or head (3) above does not bar the right of any person to recover any property delivered in pursuance of the determination from the person to whom it is delivered¹⁴.

¹ The Armed Forces Act 2001 s 12 is to be brought into force by order made by the Secretary of State under s 39(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see para 2 ante.

² For the meaning of 'service policeman' see para 330 note 2 ante.

³ For the meaning of 'commanding officer' see para 331 note 30 ante.

⁴ Armed Forces Act 2001 s 12(1) (not yet in force). At the date at which this volume states the law no such regulations had been made.

- 5 Ibid s 12(2) (not yet in force).
- 6 For the meaning of 'judicial officer' see para 331 note 3 ante.
- 7 Armed Forces Act 2001 s 12(2)(a) (not yet in force).
- 8 Ibid s 12(2)(b) (not yet in force). For the meaning of 'the services Acts' see para 330 note 18 ante.
- 9 Ibid s 12(2)(b)(i) (not yet in force).
- 10 Ibid s 12(2)(b)(ii) (not yet in force).
- 11 Ibid s 12(2)(c) (not yet in force).
- 12 Ibid s 12(2)(d) (not yet in force).
- 13 Ibid s 12(2)(e) (not yet in force).
- 14 Ibid s 12(3) (not yet in force).

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

334 Property in possession of service police or commanding officer

TEXT AND NOTES--Armed Forces Act 2001 s 12 repealed: Armed Forces Act 2006 Sch 17. For replacement provision, see the Armed Forces Act 2006 s 94. See also the Armed Forces (Disposal of Property) Regulations 2009, SI 2009/1923.

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334A. Additional powers of seizure.

1. Additional powers of seizure from premises

Where:

- 207 (1) a person is lawfully on any premises¹ other than by virtue of an authorisation of a commanding officer² and finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises;
 - 208 (2) a relevant power of seizure³ or the power described below⁴ would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and
 - 209 (3) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises:
- .20
- 30. (a) whether what he has found is something that he is entitled to seize; or
 - 31. (b) the extent to which what he has found contains something that he is entitled to seize,
- .21

that person's powers of seizure include power to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined⁵.

Where:

- 210 (i) a person who is lawfully on any premises other than by virtue of an authorisation of a commanding officer finds anything on those premises ('the seizable property') which he would be entitled to seize but for its being comprised in something else that he has (apart from this provision) no power to seize;
- 211 (ii) the power under which that person would have power to seize the seizable property is a power to which this provision applies; and
- 212 (iii) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure include power to seize both the seizable property and that from which it is not reasonably practicable to separate it⁶.

The factors to be taken into account in considering whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, are confined to the following:

- 213 (A) how long it would take to carry out the determination or separation on those premises;
- 214 (B) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;
- 215 (C) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

- 216 (D) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
- 217 (E) in the case of separation, whether the separation would be likely, or if carried out by the only means that are reasonably practicable on those premises, would be likely, to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used⁷.

Where a person exercises such a power of seizure, it is his duty⁸, on doing so, to give to the occupier of the premises⁹ a written notice:

- 218 (aa) specifying what has been seized in reliance on the powers conferred;
- 219 (bb) specifying the grounds on which those powers have been exercised;
- 220 (cc) setting out the effect of specified remedies and safeguards¹⁰;
- 221 (dd) specifying the name and address of the person to whom notice of an application¹¹ for the return of the seized property must be given; and
- 222 (ee) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements¹² which have been made¹³.

Where it appears to the person exercising in relation to any premises such a power of seizure that the occupier of the premises is not present at the time of the exercise of the power, but that there is some other person present who is in charge of the premises, the requirement to give a written notice has effect as if it required the notice to be given to that other person¹⁴.

Where it appears to the person exercising such a power of seizure that there is no one present to whom he may give a notice¹⁵, he must instead, before leaving the premises, attach such a notice in a prominent place to the premises¹⁶.

1 'Premises' has the meaning given to it in the Armed Forces Act 2001 s 16 (see PARA 330 NOTE 21): Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, art 2(1).

2 Ie an authorisation under the Armed Forces Act 2001 s 7: see PARA 331.

3 Ie a power of seizure to which SI 2006/3243 art 3 applies. Those powers are each of the powers of seizure conferred by (1) the Armed Forces Act 2001 s 5 (see PARA 331); (2) the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, arts 9, 13, 14, and 15 (except the power under art 15 in so far as it relates to the 2001 Act s 7); and (3) SI 2003/2273 Sch 1 para 13: SI 2006/3243 art 3(6). 'Seize' includes 'take a copy of' and, subject to art 16(1), cognate expressions are to be construed accordingly: art 2(1). Subject to art 16(3), SI 2006/3243 applies as if any copy taken under any power to which any provision of the order applies were the original of that of which it is a copy; and for these purposes, except arts 3 and 4 (see PARA 334A.2), the powers mentioned in art 16(2) (which are powers to obtain hard copies etc of information which is stored in electronic form) are to be treated as powers of seizure, and references to seizure and to seized property are to be construed accordingly: art 16(1). The powers mentioned in art 16(1) are the powers conferred by SI 2003/2273 arts 14(4), 15: SI 2006/3243 art 16(2). Article 16(1) does not apply to art 10: art 16(3).

4 Ie under *ibid* art 3(3).

5 *Ibid* art 3(1), (2). SI 2003/2273 art 14(6) (powers of seizure not to include power to seize anything that an authorised person has reasonable grounds for believing is legally privileged) does not apply to the power of seizure conferred by SI 2006/3243 art 3(3): art 3(5) (amended by SI 2008/1698).

6 SI 2006/3243 art 3(3).

7 *Ibid* art 3(4).

8 Ie subject to *ibid* art 5(2), (3).

9 For these purposes, the occupier of premises which are service living accommodation is (1) if the premises are a building or part of a building within the Armed Forces Act 2001 s 15(1)(a), the person subject to service law for whose use (whether alone or with members of his family) as living accommodation or as a garage the building or part of a building is provided; (2) if the premises are a room, structure or area within s 15(1)(b), any person for whom the premises are used to provide sleeping accommodation; and (3) if the premises are a locker within s 15(1)(c), the person for whose personal use the locker is provided: SI 2006/3243 art 2(8) (amended by SI 2008/1698). 'Service living accommodation' has the meaning given in the 2001 Act s 15 (see PARA 330): SI 2006/3243 art 2(1).

10 The remedies and safeguards so specified are those set out in *ibid* arts 12-14: see PARA 334A.6 *et seq*.

11 *Ie* under *ibid* art 12.

12 *Ie* made for the purposes of *ibid* art 6(2): see PARA 334A.3.

13 *Ibid* art 5(1).

14 *Ibid* art 5(2).

15 *Ie* for the purpose of complying with *ibid* art 5(1).

16 *Ibid* art 5(3).

2. Additional powers of seizure

Where:

223 (1) a service policeman¹ carrying out a lawful search of any person finds something that he has reasonable grounds for believing may be or may contain something for which he is authorised to search;

224 (2) a relevant power of seizure² or the power described below³ would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain; and

225 (3) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search:

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32. (a) whether what he has found is something that he is entitled to seize; or

33. (b) the extent to which what he has found contains something that he is entitled to seize,

.23

the service policeman's powers of seizure include power to seize so much of what he has found as it is necessary to remove from that place to enable that to be determined⁴.

Where:

226 (i) a service policeman carrying out a lawful search of any person finds something ('the seizable property') which he would be entitled to seize but for its being comprised in something else that he has, apart from this provision, no power to seize;

227 (ii) the power under which that service policeman would have power to seize the seizable property is a power to which this provision applies; and

228 (iii) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

that service policeman's powers of seizure include power to seize both the seizable property and that from which it is not reasonably practicable to separate it⁵.

The factors to be taken into account in considering whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following:

- 229 (A) how long it would take to carry out the determination or separation at that time and place;
- 230 (B) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;
- 231 (C) whether the determination or separation would (or would if carried out at that time or place) involve damage to property;
- 232 (D) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
- 233 (E) in the case of separation, whether the separation would be likely, or if carried out by the only means that are reasonably practicable at that time and place, would be likely, to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used⁶.

Where a person exercises such a power of seizure it is his duty, on doing so, to give a written notice to the person from whom the seizure is made:

- 234 (aa) specifying what has been seized in reliance on the powers conferred;
- 235 (bb) specifying the grounds on which those powers have been exercised;
- 236 (cc) setting out the effect of specified safeguards and remedies⁷;
- 237 (dd) specifying the name and address of the person to whom notice of an application⁸ for the return of the seized property must be given; and
- 238 (ee) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made.⁹

1 'Service policeman' is to be construed in accordance with the Armed Forces Act 2001 s 16(1), (6) (see PARA 330): Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, art 2(1).

2 Ie a power of seizure to which ibid art 4 applies. That power is the power of seizure conferred on a service policeman by the Armed Forces Act 2001 s 10 (see PARA 333): SI 2006/3243 art 4(6).

3 Ie under ibid art 4(3).

4 Ibid art 4(1), (2). The Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, art 14(6) (powers of seizure not to include power to seize anything that an authorised person has reasonable grounds for believing is legally privileged) does not apply to the power of seizure conferred by SI 2006/3243 art 4(3): art 4(5) (amended by SI 2008/1698).

5 SI 2006/3243 art 4(3).

6 Ibid art 4(4).

7 The remedies and safeguards so specified are those set out in ibid arts 12-14: see PARA 334A.6 et seq.

8 Ie under ibid art 12.

9 Ibid art 5(4). The arrangements referred to in the text are any arrangements made for the purposes of art 6(2): see PARA 334A.3.

3. Examination and return of property seized under additional powers of seizure

Where anything has been seized under one of the additional powers of seizure¹, it is the duty of the person for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which² ensure:

239 (1) that an initial examination of the property is carried out by a service policeman³ as soon as reasonably practicable⁴ after the seizure⁵;

240 (2) that that examination is confined to whatever is necessary for determining how much of the property:

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34. (a) is property for which the person seizing it had power to search when he made the seizure but is not property the return⁶ of which is required⁷;

35. (b) that it is property the retention of which is authorised⁸; or

36. (c) that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate⁹ from property falling within heads (a) or (b) above¹⁰;

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241 (3) that anything which is found, on that examination, not to fall within heads (a) to (c) above is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed¹¹; and

242 (4) that, until the initial examination of all the seized property has been completed and anything which does not fall within heads (a) to (c) has been returned, the seized property is kept separate from anything seized under any other power¹².

1. I.e. under the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, arts 3 or 4 (see PARAS 334A.1, 334A.2).

2. I.e. subject to ibid art 14 (see PARA 334A.9).

3. For the meaning of 'service policeman' see PARA 334A.2.

4. In determining the earliest practicable time for the carrying out of an initial examination of the seized property, due regard must be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if he chooses) of being represented at the examination: SI 2006/3243 art 6(4).

5. Ibid art 6(1), (2)(a).

6. 'Return', in relation to seized property, is to be construed in accordance with ibid art 11 (see PARA 334A.7) and cognate expressions are to be construed accordingly: art 2(1).

7. I.e. required by ibid art 7 (see PARA 334A.4).

8. I.e. authorised by ibid art 9 (see PARA 334A.6).

9. References to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful: ibid art 6(5).

10. Ibid art 6(1), (2)(b), (3).

11. Ibid art 6(1), (2)(c).

12. Ibid art 6(1), (2)(d).

4. Obligation to return items subject to legal privilege

If, at any time after a seizure¹ of anything has been made in exercise of a power of seizure²:

- 243 (1) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property is an item subject to legal privilege³, or has such an item comprised in it; and
- 244 (2) in a case where the item is comprised in something else⁴ which has been lawfully seized, it is not comprised in property of a specified type⁵;

it is the duty of that person to secure that the item is returned⁶ as soon as reasonably practicable after the seizure⁷.

Property in which an item subject to legal privilege is of a specified type for the purposes of head (2) above if:

- 245 (a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure, but is not property which is required to be returned under the obligation to return items subject to legal privilege, or property the retention of which is authorised⁸; and
- 246 (b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful⁹.

1 See PARA 334A.1 NOTE 3.

2 Ie in exercise of a power of seizure to which the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, art 7 applies. Those powers are (1) the powers of seizure conferred by arts 3, 4 (see PARAS 334A.1, 334A.2); and (2) each of the powers of seizure conferred by the Armed Forces Act 2001 Pt 2 (ss 2-16) and by the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273: SI 2006/3243 art 7(4).

3 'Items subject to legal privilege' has the meaning given in the Police and Criminal Evidence Act 1984 s 10 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 873) and 'legal privilege' is to be construed accordingly: SI 2006/3243 art 2(1).

4 References to any item or material being comprised in other property include references to its being mixed with that other property: ibid art 2(7).

5 Ie property falling within ibid art 7(2).

6 'Return', in relation to seized property, is to be construed in accordance with ibid art 11 (see PARA 334A.7) and cognate expressions are to be construed accordingly: art 2(1).

7 Ibid art 7(1).

8 Ie authorised by ibid art 9 (see PARA 334A.6).

9 Ibid art 7(2), (3).

5. Obligation to return excluded and special procedure material

Where, at any time after a seizure¹ of anything has been made in exercise of a specified power of seizure²:

- 247 (1) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property is excluded material³ or special procedure material⁴, or has any excluded material or special procedure material comprised in it⁵;
- 248 (2) its retention is not authorised⁶;

249 (3) in a case where the material is comprised in something else which has been lawfully seized, it is not comprised in property falling within head (a) or (b) below,

it is the duty of the person for the time being having possession of the seized property to secure that the item is returned⁷ as soon as reasonably practicable after the seizure⁸.

For the purpose of head (3) above, property is excepted if it is property in which any excluded material or special procedure material is comprised and:

250 (a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when he made the seizure but is not property the return of which is required by the above provisions or by provisions relating to legal privilege⁹, and, in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful¹⁰; or

251 (b) the whole or a part of the rest of the property is property the retention of which is authorised by specified provisions¹¹, and, in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful¹².

1 See PARA 334A.1 NOTE 3.

2 I.e. a power under the Armed Forces Act 2001 s 5 (see PARA 331).

3 'Excluded material' has the meaning given in the Police and Criminal Evidence Act 1984 s 11: Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, art 2(1).

4 'Special procedure material' has the meaning given in the Police and Criminal Evidence Act 1984 s 14: SI 2006/3243 art 2(1).

5 See *ibid* art 2(7); and PARA 334A.4.

6 I.e. authorised by *ibid* art 9 (see PARA 334A.6).

7 'Return', in relation to seized property, is to be construed in accordance with *ibid* art 11 (see PARA 334A.7) and cognate expressions are to be construed accordingly: art 2(1).

8 *Ibid* art 8(1), (2).

9 I.e. under *ibid* art 7 (see PARA 334A.4).

10 *Ibid* art 8(3).

11 I.e. under *ibid* art 9.

12 *Ibid* art 8(4).

6. Retention of seized items

The retention of property seized¹ in exercise of specified powers of seizure² is authorised to the extent that there are reasonable grounds for believing: (1) that it is property obtained in consequence of the commission of a service offence³, and that it is necessary for it to be retained in order to prevent its being concealed, lost, damaged, altered or destroyed; or (2) that it is evidence in relation to any service offence, and that it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed⁴.

1 See PARA 334A.1 NOTE 3.

2 Ie a power of seizure conferred by (1) the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, arts 3, 4 (see PARAS 334A.1, 334A.2); (2) the Armed Forces Act 2001 Pt 2 (ss 2-16); and (3) the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273.

3 'Service offence' means an offence under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955: SI 2006/3243 art 2(1).

4 Ibid art 9(1)-(3). Nothing in art 9 authorises the retention (except in pursuance of art 7(2)) of anything at any time when its return is required by art 7 (see PARA 334A.4): art 9(4). For supplementary provision relating to the retention of seized items, see art 10.

7. Person to whom seized property is to be returned

Where anything has been seized¹ in exercise of any specified power of seizure², and there is an obligation³ for the whole or any part of the seized property to be returned, the obligation to return it is an obligation to return it to the person from whom it was seized⁴. However, where:

- 252 (1) any person is obliged⁵ to return anything that has been seized to the person from whom it was seized; and
- 253 (2) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,

his duty to return it is, instead, a duty to return it to that other person or, as the case may be, to the person appearing to him to have the best right to the thing in question⁶.

Where different persons claim to be entitled to the return of anything that is required to be returned, that thing may be retained for as long as is reasonably necessary for the determination⁷ of the person to whom it must be returned⁸.

1 See PARA 334A.1 NOTE 3.

2 Ie in exercise of a power of seizure to which the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, art 11 applies. Those powers are (1) the powers of seizure conferred by arts 3, 4 (see PARAS 334A.1, 334A.2); and (2) each of the powers of seizure conferred by the Armed Forces Act 2001 Pt 2 (ss 2-16) and by the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273: SI 2006/3243 art 11(6).

3 Ie under SI 2006/3243.

4 Ibid art 11(1). References to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing's having been found on any premises, are references to the occupier of the premises at the time of the seizure: art 11(4). References in art 11 to the occupier of any premises at the time of a seizure, in relation to a case in which (1) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises; and (2) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises, are references to that person: art 11(5).

5 Ie under SI 2006/3243.

6 Ibid art 11(2).

7 Ie in accordance with ibid art 11(2).

8 Ibid art 11(3).

8. Application to the judicial officer

Where anything has been seized¹ in exercise, or purported exercise, of a relevant power of seizure², any person with a relevant interest³ in the seized property may apply to a judicial officer⁴ for the return⁵ of the whole or a part of the seized property on one or more of the following grounds⁶:

- 254 (1) that there was no power to make the seizure;
 - 255 (2) that the seized property is or contains an item subject to legal privilege that is not comprised in⁷ property inextricably linked to other seizable property⁸;
 - 256 (3) that the seized property is or contains any excluded material⁹ or special procedure material¹⁰ which:
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- 37. (a) has been seized under a power to which the obligation to return excluded and special material applies¹¹;
 - 38. (b) is not comprised in property in respect of which the obligation to return does not apply¹²; and
 - 39. (c) is not property the retention of which is authorised¹³;
- .27
- 257 (4) that the seized property is or contains something seized under an additional power of seizure¹⁴ which is not inextricably linked to property which may be retained¹⁵.

Subject as follows¹⁶, on such an application the judicial officer must, if satisfied as to any of the matters mentioned in heads (1) to (4) above, order the return of so much of the seized property as is property in relation to which the judicial officer is so satisfied; and to the extent that the judicial officer is not so satisfied, dismiss the application¹⁷.

On an application: (i) by a person with a relevant interest; (ii) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure; or (iii) on an application made by a person with a relevant interest in anything seized under an additional power of seizure, made on the grounds that the requirements to secure arrangements for the initial examination of seized property and for the separation and subsequent return of property not inextricably linked with it have not been or are not being complied with¹⁸, the judicial officer may give such directions as he thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property¹⁹.

On any application, the judicial officer may authorise the retention of any property which has been seized in exercise, or purported exercise, of a relevant power of seizure, and would otherwise fall to be returned, if the judicial officer is satisfied that the retention of the property is justified on grounds that (if the property were returned) it would immediately become appropriate:

- 258 (A) to issue, on the application of the person who is in possession of the property at the time of the application under this provision, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or
- 259 (B) to make an order under specified provisions²⁰ under which the property would fall to be delivered up or produced to the person mentioned in head (A) above²¹.

1 See PARA 334A.1 NOTE 3.

2 The relevant powers of seizure for these purposes are the power of seizure conferred by: (1) the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, arts 3, 4 (see PARAS 334A.1, 334A.2); (2) the Armed Forces Act 2001 Pt 2 (ss 2-16) except the power in s 7; and (3) the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, except the power under art 15 in so far as it relates to the 2001 Act s 7: SI 2006/3243 art 12(10).

3 References in *ibid* art 12 to a person with a relevant interest in seized property are references to (1) the person from whom it was seized; (2) any person with an interest in the property; or (3) any person, not falling within head (1) or (2), who had custody or control of the property immediately before the seizure: art 12(11). For the purposes of head (2), the persons who have an interest in seized property are, in the case of property which is or contains an item subject to legal privilege, to be taken to include the person in whose favour that privilege is conferred: art 12(12). As to legal privilege, see PARA 334A.4.

4 'Judicial officer' has the meaning given in the Armed Forces Act 2001 s 16(1) (see PARA 331); SI 2006/3243 art 2(1).

5 'Return', in relation to seized property, is to be construed in accordance with *ibid* art 11 (see PARA 334A.7) and cognate expressions are to be construed accordingly: art 2(1).

6 *Ibid* art 12(1), (2).

7 See *ibid* art 2(7); and PARA 334A.4.

8 Is not comprised in property falling within *ibid* art 7(2) (see PARA 334A.4).

9 See PARA 334A.5 NOTE 3.

10 See PARA 334A.5 NOTE 4.

11 Is under a power to which SI 2006/3243 art 8 applies (see PARA 334A.5).

12 Is property falling within *ibid* art 8(3) or (4).

13 Is by *ibid* art 9 (see PARA 334A.6).

14 Is under *ibid* art 3 or 4.

15 *Ibid* art 12(3). Head (4) in the TEXT refers to property which does not fall within art 6(3) (see PARA 334A.3).

16 Is subject to *ibid* art 12(6).

17 *Ibid* art 12(4).

18 Is the requirement under *ibid* art 6(2) (see PARA 334A.3).

19 *Ibid* art 12(5).

20 Is under the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, Sch 1 para 5.

21 SI 2006/3243 art 12(6), (7). Where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts ('part A' and 'part B') comprised in it such that:

66 (1) it would be inappropriate, if the property were returned, to take any action such as is mentioned in art 12(7) in relation to part A;

67 (2) it would (or would but for the facts mentioned in head (1)) be appropriate, if the property were returned, to take such action in relation to part B; and

68 (3) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,

the facts mentioned in head (1) are not to be taken into account by the judicial officer in deciding whether the retention of the property is justified on grounds falling within art 12(7): art 12(8), (9).

9. Duty to secure

Where property has been seized¹ in exercise, or purported exercise, of any additional power of seizure², a duty to secure arises³ in relation to the seized property if:

260 (1) a person entitled to do so makes an application⁴ for the return of the property;

261 (2) at least one of the following two conditions is satisfied:

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40. (a) the application is made on the grounds that the seized property is or contains an item subject to legal privilege⁵ that is not comprised in⁶ inextricably linked property⁷;

41. (b) the seized property was seized by a person who had, or purported to have, power⁸ to seize it by virtue only of one or more of the specified powers⁹, and the application (i) is made on the ground that the seized property is or contains something which is not of a specified type¹⁰; and (ii) states that the seized property is or contains special procedure material¹¹ or excluded material¹²; and

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262 (3) notice of the application is given to a relevant person¹³.

The duty to secure¹⁴ is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to secure that arrangements are in force that ensure that the seized property (without being returned) is not, at any time after the giving of the notice of the application¹⁵ for the return of the property, either examined or copied, or put to any use to which its seizure would otherwise¹⁶ entitle it to be put, except with the consent of the applicant or in accordance with the directions of a judicial officer¹⁷. Nothing in any such arrangements is to be taken to prevent the giving of a notice¹⁸ for the disclosure of material protected by encryption etc in respect of any information contained in the seized material¹⁹.

1 See PARA 334A.1 NOTE 3.

2 Ie a power of seizure conferred by the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, arts 3, 4 (see PARAS 334A.1, 334A.2).

3 Ie under ibid art 14.

4 Ie under ibid art 12 (see PARA 334A.8).

5 As to legal privilege, see PARA 334A.4.

6 See SI 2006/3243 art 2(7); and PARA 334A.4.

7 Ie that is not comprised in property falling within ibid art 7(2) (see PARA 334A.4).

8 Ie under SI 2006/3243.

9 Ie the powers specified in ibid art 13(4), namely: (1) the powers of seizure under the Armed Forces Act 2001 ss 5-10; (2) the powers of seizure conferred by the Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, except the power under art 15 in so far as it relates to the 2001 Act s 7: SI 2006/3243 art 13(4).

10 Ie does not fall within ibid art 6(3) (see PARA 334A.3).

11 See PARA 334A.5 NOTE 4.

12 See PARA 334A.5 NOTE 3.

13 SI 2006/3243 art 13(1)-(3). 'A relevant person' means any one of the following: (1) the person who made the seizure; (2) the person for the time being having possession, in consequence of the seizure, of the seized property; (3) the person named for the purposes of art 5(1)(d) or (4)(d) in any notice given under that art 5 (see PARA 334A.2) with respect to the seizure: art 13(5).

14 Ie the duty that arises under ibid art 14.

15 Ie an application under ibid art 13(1).

16 Ie apart from ibid art 14(1).

17 Ibid art 14(1). For the meaning of 'judicial officer', see PARA 334A.8 NOTE 4. Article 14(1) does not have effect in relation to any time after the withdrawal of the application to which the notice relates: art 14(2).

18 Ie under the Regulation of Investigatory Powers Act 2000 s 49 (see POLICE).

19 SI 2006/3243 art 14(3). However, art 14(1) applies to anything disclosed for the purpose of complying with such a notice as it applies to the seized material in which the information in question is contained: see art 14(3).

10. Use of inextricably linked property

There are special provisions which apply to property, other than property which is for the time being required to be secured¹, if it has been seized under an additional power of seizure² or a specified power of seizure³, and is inextricably linked property⁴. It is the duty of the person for the time being having possession, in consequence of the seizure, of the inextricably linked property to ensure that arrangements are in force which secure that that property (without being returned) is not at any time, except with the consent of the person from whom it was seized, either examined or copied, or put to any other use⁵. However, this does not require that such arrangements should prevent inextricably linked property from being put to any use to the extent that such use is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised⁶.

1 Ie in pursuance of the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243, art 14 (see PARA 334A.9).

2 Ie a power of seizure conferred by ibid arts 3, 4 (see PARAS 334A.1, 334A.2).

3 Ie a power of seizure conferred by (1) the Armed Forces Act 2001 Pt 2 (ss 2-16) except the power in s 7; and (2) the Armed Forces (Entry, Search and Seizure) Order 2003, SI 2003/2273, except the power under art 15 in so far as it relates to the 2001 Act s 7.

4 See SI 2006/3243 art 15(1). Property is inextricably linked property for the purposes of art 15 if it falls within art 15(6)-(8): art 15(5). Property falls within art 15(6) if (1) it has been seized under a power conferred by art 3 or 4; and (2) but for art 6(3)(c) (see PARA 334A.3), arrangements under art 6(2) in relation to the property would be required to ensure the return of the property as mentioned in art 6(2)(c): art 15(6). Property falls within art 15(7) if (a) it has been seized under a power to which art 7 applies (see PARA 334A.4); and (b) but for art 7(1)(b), the person for the time being having possession of the property would be under a duty to secure its return as mentioned in art 7(1)(b): art 15(7). Property falls within art 15(8) if (i) it has been seized under a power of seizure to which art 8 applies (see PARA 334A.5); and (ii) but for art 8(1)(c), the person for the time being having possession of the property would be under a duty to secure its return as mentioned in art 8(1)(c): art 15(8).

5 Ibid art 15(2).

6 Ibid art 15(3), (4).

UPDATE

329-334 Powers of Surveillance, Entry, Search and Seizure

As to additional powers of seizure, see the Armed Forces (Entry, Search and Seizure) Order 2006, SI 2006/3243; and PARA 334A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/A. ARREST/335. Arrest of naval offenders.

(vi) Arrest and Custody

A. ARREST

335. Arrest of naval offenders.

It is the duty of every person subject to naval discipline¹ who knows or has reasonable grounds for suspecting that any other person subject to naval discipline is committing or has committed an offence under any provision of Part I of the Naval Discipline Act 1957², to take all reasonable steps within his power to cause that person to be brought to justice³.

A person subject to naval discipline who is found committing or is alleged to have committed or is reasonably suspected of having committed an offence may be arrested⁴ personally by, or under the orders of:

- 263 (1) a provost officer⁵ or any officer⁶ or person legally exercising authority for him, except that no officer may be arrested save on the order of another officer⁷;
- 264 (2) in the case of an officer, an officer subject to naval discipline who is his superior officer⁸ or, where the officer to be arrested is engaged in a mutiny⁹, quarrel or disturbance, any officer subject to naval discipline¹⁰;
- 265 (3) in the case of a rating¹¹, an officer subject to naval discipline, a warrant officer, chief petty officer, petty officer or leading rating subject to naval discipline who is of superior rate or senior to him in the same rate, and any rating who is either exercising authority as a member of the regulating staff¹² or as a member of the staff of the officer of the watch¹³.

These powers of arrest are subject to any limitations imposed by standing orders of the commanding officer of any of Her Majesty's ships or naval establishments¹⁴.

In the same circumstances, certain civilians found committing offences for which they are liable to be tried¹⁵ may be arrested by a provost officer or any officer or person legally exercising authority under him or on his behalf, or by or under the orders of any officer subject to naval discipline¹⁶.

Where spying for the enemy or seducing a person from his duty or allegiance is involved, any officer or rating subject to naval discipline, or any provost officer or person legally exercising authority under him or on his behalf may arrest any person not subject to naval discipline¹⁷.

Within certain limitations as to time, there is power to arrest a person no longer subject to naval discipline who committed an offence before he ceased to be so subject¹⁸.

A person subject to naval discipline suspected of committing offences under Part I of the Act may be arrested under a warrant for arrest issued by naval authorities¹⁹. Constables have power to arrest without warrant any person sentenced²⁰ to imprisonment or detention who is unlawfully at large during the currency of his sentence²¹ and any person whom they have reasonable cause to suspect of being an officer or rating of any of Her Majesty's naval forces who has deserted or is absent without leave²². Where no constable is available, any officer or rating subject to naval discipline, or any other person, may arrest any person whom he has reasonable cause to suspect has deserted or is absent without leave²³.

Persons subject to naval discipline who have been or are about to be arrested by the civil or service authorities of a country outside the United Kingdom²⁴ in connection with an alleged offence against the laws of that country may be taken into custody from those authorities, or arrested, by the United Kingdom service authorities²⁵.

- 1 As to the persons subject to naval discipline see para 306 ante.
- 2 Ie the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended).
- 3 See *ibid* s 45(1). This provision itself appears to confer no power of arrest: cf *R v Cuming, ex p Hall* (1887) 19 QBD 13, 56 LJQB 287, DC.
- 4 Naval Discipline Act 1957 s 45(2), (3).
- 5 For the meaning of 'provost officer' see para 403 note 3 post.
- 6 For the meaning of 'officer' see para 152 ante.
- 7 Naval Discipline Act 1957 s 45(2)(c) proviso.
- 8 For the meaning of 'superior officer' see para 400 note 4 post.
- 9 For the meaning of 'mutiny' see para 399 post.
- 10 Naval Discipline Act 1957 s 45(2)(b).
- 11 For the meaning of 'rating' see para 156 note 1 ante.
- 12 Regulating staff may be loosely described as 'ship's police'.
- 13 Naval Discipline Act 1957 s 45(2)(b) (amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(1)).
- 14 Naval Discipline Act 1957 s 45(2). For the meaning of 'Her Majesty's ships' see para 6 note 3 ante; and for the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.
- 15 Ie by virtue of *ibid* s 118 (as amended; prospectively further amended): see para 311 ante.
- 16 See *ibid* s 118(3), Sch 4 para 3.
- 17 See *ibid* s 95(1); and para 51 ante.
- 18 See *ibid* s 51(1) (amended by the Armed Forces Act 1981 ss 6(5), 28(2), Sch 5 Pt II). As to time limitations see para 304 ante.
- 19 See the Naval Discipline Act 1957 s 103 (as amended); and para 65 ante.
- 20 Ie under *ibid* Pt II (ss 45-92) (as amended).
- 21 See *ibid* s 104(1); and para 65 ante. Powers of arrest under ss 104, 105 (as amended) are specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 927.
- 22 See the Naval Discipline Act 1957 s 105(1); and para 62 ante. See also note 21 supra.
- 23 See *ibid* s 105(2); and para 62 ante. See also note 21 supra.
- 24 As to the meaning of 'United Kingdom' see para 20 note 1 ante.
- 25 See the Armed Forces Act 1966 s 15 (as amended); and para 337 post.

UPDATE

335-336 Arrest of naval offenders, Arrest of army and air force offenders

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to powers of arrest for service offences generally, and the power of arrest in anticipation of the commission of a service offence, see the Armed Forces Act 2006 ss 67-69. For the meaning of 'service offence' see PARA 451.

335 Arrest of naval offenders

TEXT AND NOTES--As to arrest and detention by civil authorities, see the Armed Forces Act 2006 ss 313-320; the Armed Forces (Warrants of Arrest for Service Offences) Rules 2009, SI 2009/1110; the Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009, SI 2009/1108; and PARA 62.

TEXT AND NOTE 21--As to the power of service policemen to arrest persons unlawfully at large, see now the Armed Forces Act 2006 s 303.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/A. ARREST/336. Arrest of army and air force offenders.

336. Arrest of army and air force offenders.

Any person subject to military or air force law¹ who is found committing an offence contrary to whichever of those codes is applicable to him, or is reasonably suspected or alleged to have committed such an offence, may be arrested by any person having the proper authority, in accordance with the following provisions². An officer may be arrested by an officer of the regular forces³ or of the regular air force⁴, as the case may be, of superior rank to himself, or, if engaged in a quarrel or disorder, by such an officer of any rank⁵. A warrant officer⁶, non-commissioned officer⁷, soldier or airman, may be arrested by any officer, warrant officer or non-commissioned officer of the regular forces or of the regular air force, as the case may be, of superior rank to himself⁸. Any provost officer⁹, or any officer, warrant officer, non-commissioned officer or rating legally exercising authority under a provost officer or on his behalf, may arrest any officer, warrant officer, non-commissioned officer, soldier or airman, but an officer may be arrested in this manner only by order of another officer¹⁰. The powers of arrest described above may be exercised either personally or by ordering into arrest the person to be arrested, or by giving orders for his arrest¹¹.

Persons subject to military or air force law who have been or are about to be arrested by the civil or service authorities of a country outside the United Kingdom¹² in connection with an alleged offence against the laws of that country may be taken into custody from those authorities, or arrested, by the United Kingdom service authorities¹³.

1 As to the persons subject to military or air force law see para 307 et seq ante.

2 See the Army Act 1955 s 74(1); and the Air Force Act 1955 s 74(1). As to the position of servicemen who are attached to a service other than their own see para 309 ante. There is no specific power under the Army Act 1955 or the Air Force Act 1955 to arrest members of the reserve or auxiliary forces, but when such persons are subject to military or air force law (see para 310 ante) they may be arrested by virtue of the Army Act 1955 s 74 (as amended) or the Air Force Act 1955 s 74 (as amended). Members of colonial forces subject to military or air force law under the Army Act 1955 s 207(3) (as amended) or the Air Force Act 1955 s 207(3) (as amended) (see para 313 ante) have liabilities to arrest and powers of arrest equivalent to members of the regular forces or the regular air force. As to the application of provisions of the service discipline Acts to colonial forces see para 313 ante. As to the service discipline Acts see para 302 ante. Members of a Commonwealth force attached to a home force, or who are members of a Commonwealth force which is serving together with a home force, under the Visiting Forces (British Commonwealth) Act 1933, have the same liabilities to arrest by, and powers of arrest over, members of the home force as other members of the home force: see paras 22, 255, 312 ante. For the meaning of 'Commonwealth force' see para 20 note 6 ante. As to who may arrest civilians who are within the scope of the Army Act 1955 s 209 (as amended; prospectively further amended) or the Air Force Act 1955 s 209 (as amended; prospectively further amended) (see para 311 ante) see the Army Act 1955 s 209(3)(c); and the Air Force Act 1955 s 209(3)(c). As to additional powers of arrest by civil and service authorities over persons alleged to be guilty of desertion or absence without leave, the procedure which may follow, and procedure on the surrender of illegal absentees, see the Army Act 1955 ss 186-190A (as amended); the Air Force Act 1955 ss 186-190A (as amended); and paras 62-65 ante.

3 For the meaning of 'regular forces' see para 191 ante.

4 For the meaning of 'regular air force' see para 206 ante.

5 Army Act 1955 s 74(2); Air Force Act 1955 s 74(2). As to the rights of, and procedure relating to, officers and warrant officers in military or air force custody see the Queen's Regulations for the Army 1975 paras 6.009-6.011; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 paras 1037-1039.

6 References in the Army Act 1955 Pt II (ss 24-143) (as amended) and the Air Force Act 1955 Pt II (ss 24-143) (as amended) to warrant officers do not include references to acting warrant officers: Army Act 1955 s 143(2); Air Force Act 1955 s 143(2).

7 References in the Army Act 1955 Pt II (as amended) and the Air Force Act 1955 Pt II (as amended) to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers: Army Act 1955 s 143(3); Air Force Act 1955 s 143(3).

8 Army Act 1955 s 74(3); Air Force Act 1955 s 74(3). See note 5 *supra*.

9 For the meaning of 'provost officer' see para 403 note 3 *post*.

10 Army Act 1955 s 74(4); Air Force Act 1955 s 74(4) (both amended by the Naval Discipline Act 1957 s 136, Sch 5). See para 335 *ante*. It follows from these provisions, and from the definitions of 'provost officer' in each of the three service discipline Acts (see para 403 note 3 *post*), that provost officers of each of the three services, and those exercising authority on their behalf, have powers of arrest over members both of their own service and of the other two.

11 Army Act 1955 s 74(5); Air Force Act 1955 s 74(5). These provisions are expressed to be subject to the provisions of the Queen's Regulations: see the Queen's Regulations for the Army 1975 para 6.004 *et seq*; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1036 *et seq*.

12 As to the meaning of 'United Kingdom' see para 20 *ante*.

13 See the Armed Forces Act 1966 s 15 (as amended); and para 337 *post*.

UPDATE

335-336 Arrest of naval offenders, Arrest of army and air force offenders

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to powers of arrest for service offences generally, and the power of arrest in anticipation of the commission of a service offence, see the Armed Forces Act 2006 ss 67-69. For the meaning of 'service offence' see PARA 451.

336 Arrest of army and air force offenders

TEXT AND NOTES--As to the power of service policemen to arrest persons unlawfully at large, see the Armed Forces Act 2006 s 303. As to arrest and detention by civil authorities, see the Armed Forces Act 2006 ss 313-320; the Armed Forces (Warrants of Arrest for Service Offences) Rules 2009, SI 2009/1110; the Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations 2009, SI 2009/1108; and PARA 62.

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337. Arrest of naval, army and air force offenders by overseas authorities.

Any person subject to naval discipline, military or air force law¹ who is detained in the custody² of a civil or service authority³ of a country outside the United Kingdom⁴ in connection with an offence punishable under the law of that country may, if he is handed over by the authority, be taken into naval, military or air force custody⁵ and kept in such custody⁶.

Any person subject to naval discipline, military or air force law who is in a country outside the United Kingdom may be arrested, irrespective of rank⁷, by an officer not below the rank of lieutenant-commander or a military or air force officer of corresponding rank or an officer below that rank in command of one of Her Majesty's ships if it appears to him⁸:

- 266 (1) that the arrest of that person by a civil or service authority of that country in connection with an offence against the law of that country is imminent⁹; or
- 267 (2) that, if a request made by a civil or service authority of that country for the arrest, in accordance with a power exercisable by members of Her Majesty's forces, of that person in connection with such an offence is not complied with, that person is likely to be arrested by that authority¹⁰,

or may, if that officer so requires, be arrested by a specified person¹¹. A person arrested may be kept in naval, military or air force custody¹².

A person so taken into custody or arrested may, at the request of the civil or service authority concerned, be handed back or handed over to that authority for the purpose of trial for, or investigation into, the offence in question¹³.

1 As to the persons subject to naval discipline, military or air force law see para 306 et seq ante.

2 Any reference to the keeping of a person in custody includes a reference to his being kept under open arrest: Armed Forces Act 1966 s 15(9).

3 'Civil authority' means a civil authority authorised by law to detain persons: *ibid* s 15(9). 'Service authority' means a naval, military or air force authority: s 15(9).

4 As to the meaning of 'United Kingdom' see para 20 note 1 ante.

5 *Ie* in accordance with the Armed Forces Act 1966 s 15(3): see the text and note 6 *infra*.

6 *Ibid* s 15(1), (9). The purpose of these provisions is to permit members of Her Majesty's forces outside the United Kingdom, who are accused of offences against the law of the place where they are, to be arrested by the United Kingdom service authorities, or handed over to those authorities, and kept in United Kingdom service custody pending their trial in a local court. The taking of a person into custody under s 15(1) may be carried out, or he may be arrested pursuant to s 15(2)(ii) (see the text to note 11 *infra*), by a person who, by virtue of the Army Act 1955 s 74 (as amended), the Air Force Act 1955 s 74 (as amended) (see para 336 ante), or the Naval Discipline Act 1955 s 45 (as amended) (see para 335 ante), would have power to arrest him if he had committed an offence under the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), or the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended): see the Armed Forces Act 1966 s 15(3). The powers conferred by s 15(3) may be exercised personally; or by ordering the person to be taken into custody or to be arrested into naval, military or air force custody or, as the case may be, arrest; or by giving orders for his being taken into custody or arrested: s 15(3). For the purposes of s 15(3), a member of one service whom it is proposed should be taken into custody or arrested by a member of another service is treated as holding corresponding rank in that other service to the rank held by him: s 15(3). As to corresponding ranks generally see para 1 note 7 ante.

7 Ibid s 15(2)(i).

8 For the meaning of 'Her Majesty's ships' see para 6 note 3 ante; definition applied by ibid s 15(9).

9 Ibid s 15(2)(a).

10 Ibid s 15(2)(b).

11 Ibid s 15(2)(ii). The reference in the text to arrest by a specified person is a reference to arrest in accordance with s 15(3) (see note 6 supra): see s 15(2)(ii).

12 See ibid s 15(3).

13 See ibid s 15(4). A person may be retained in service custody notwithstanding his ceasing to be subject to naval discipline, military or air force law: see s 15(5). As to the power of the Defence Council to make regulations as to the implementation of these powers, and other consequential matters (including the power to arrest, take into, and retain in service custody civilians who are subject to naval discipline, military or air force law by virtue of the Army Act 1955 s 209 (as amended; prospectively further amended), the Air Force Act 1955 s 209 (as amended; prospectively further amended), or the Naval Discipline Act 1957 s 118 (as amended; prospectively further amended): see para 311 ante) see the Armed Forces Act 1966 s 15(6), (8). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

UPDATE

337 Arrest of naval, army and air force offenders by overseas authorities

TEXT AND NOTES--Armed Forces Act 1966 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/B. CUSTODY/338. Limitations on custody without charge.

B. CUSTODY

338. Limitations on custody without charge.

A person arrested¹ must not be kept in naval, military or air force custody² without being charged³ unless such custody is authorised⁴, reviewed⁵ or extended⁶. If at any time the commanding officer⁷ of a person who is kept in naval, military or air force custody without being charged becomes aware that the grounds for keeping that person in custody have ceased to apply, and is not aware of any other grounds on which continuing to keep that person in custody could be justified⁸, it is the duty of the commanding officer to order his immediate release from custody⁹. A person who appears to his commanding officer to have been unlawfully at large when he was arrested is not to be released¹⁰.

1 le under the Army Act 1955 s 74 (as amended), the Air Force Act 1955 s 74 (as amended) or the Naval Discipline Act 1957 s 45 (as amended): see paras 335-336 ante.

2 An officer or warrant officer in military custody is to be placed under the charge of an escort consisting of another officer or warrant officer of the same rank, if possible; and, if held in his quarters, he is not to leave those quarters except to take such exercise under supervision as the medical officer considers necessary. If circumstances so require, however, he may be placed under the charge of a guard, picquet, patrol, sentry or provost officer: Queen's Regulations for the Army 1975 para 6.011. This provision holds good for a non-commissioned officer in military custody, so far as is possible: see the Queen's Regulations for the Army 1975 para 6.012(a). A private soldier on being placed in military custody is to be confined in the unit detention rooms under charge of a member of the regimental police or, where this is not possible, a guard: Queen's Regulations for the Army 1975 para 6.012(b). A female officer or soldier in military custody is to be placed under the charge of a female officer or soldier of appropriate rank: Queen's Regulations for the Army 1975 para 6.014.

An officer, warrant officer, non-commissioned officer or aircraftman in air force custody is to be confined in a licensed custody facility in accordance with the provisions of JSP 469 (Code of Practice for the Management of Personnel in Service Custody). However, if circumstances require, he may on arrest be temporarily placed under the charge of a guard, picket, patrol, sentry or member of the Royal Air Force Police: Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1037(1).

Naval custody is normally effected in a police cell, but may be carried out in any other secure accommodation, including on board one of Her Majesty's ships or submarines, so long as certain criteria are met, in particular that it is safe for the suspect (see JSP 469): see the Manual of Naval Law vol I Ch 2 art 0211.

3 For the purposes of the Army Act 1955 s 75 (as substituted), ss 75A-75K (as added), the Air Force Act 1955 s 75 (as substituted), ss 75A-75K (as added), or the Naval Discipline Act 1957 ss 47A-47L (as added) (see para 339 et seq post), a person is to be treated as charged with an offence when he is informed in accordance with regulations of the Defence Council that a charge is to be reported to his commanding officer under the Army Act 1955 s 76(1) (as substituted), the Air Force Act 1955 s 76(1) (as substituted) or the Naval Discipline Act 1957 s 52B(1) (as added) (see para 348 ante): Army Act 1955 s 75(4) (s 75 substituted by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act 1955 s 75(4) (s 75 substituted by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47A(4) (s 47A added by the Armed Forces Discipline Act 2000 s 1(3)). Such regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

4 le in accordance with the Army Act 1955 s 75A (as added), the Air Force Act 1955 s 75A (as added) or the Naval Discipline Act 1957 s 47B (as added): see para 339 post.

5 le in accordance with the Army Act 1955 s 75B (as added), the Air Force Act 1955 s 75B (as added) or the Naval Discipline Act 1957 s 47C (as added): see para 340 post.

6 Army Act 1955 s 75(1) (as substituted: see note 3 supra); Air Force Act 1955 s 75(1) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 47A(1) (as added: see note 3 supra). The text refers to an extension

of custody without charge in accordance with the Army Act 1955 s 75C (as added), the Air Force Act 1955 s 75C (as added) or the Naval Discipline Act 1957 s 47D (as added): see para 341 post.

The Army Act 1955 s 75 (as substituted), ss 75A-75C (as added), the Air Force Act 1955 s 75 (as substituted), ss 75A-75C (as added), and the Naval Discipline Act 1957 ss 47A-47D (as added) (see para 339 et seq post) apply:

- 69 (1) where a person is delivered into naval, military or air force custody under the Army Act 1955 s 187(2) (as amended), s 187(3) (as amended) (see para 63 ante), s 188(2) (see para 64 ante) or s 190A(3) (as added) (see para 65 ante), the Air Force Act 1955 s 187(2) (as amended), s 187(3) (as amended) (see para 63 ante), s 188(2) (see para 64 ante) or s 190A(3) (as added) (see para 65 ante), the Naval Discipline Act 1957 s 103(3) (see para 65 ante), s 108(2) (see para 64 ante), s 109(1) (as amended) or s 109(3) (as amended) (see para 63 ante) or under the Reserve Forces Act 1996 Sch 2 (as amended) (see para 62 et seq ante) (Army Act 1955 s 75D(1) (a) (s 75D added by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act 1955 s 75D(1)(a) (s 75D added by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47E(1) (a) (s 47E added by the Armed Forces Discipline Act 2000 s 1(3))); and
- 70 (2) in any other case where a person arrested by a constable is delivered into naval, military or air force custody (Army Act 1955 s 75D(1)(b) (as so added); Air Force Act 1955 s 75D(1)(b) (as so added); Naval Discipline Act 1957 s 47E(1)(b) (as so added)),

as they apply where a person is arrested under the Army Act 1955 s 74 (as amended), the Air Force Act 1955 s 74 (as amended) (see para 336 ante), or the Naval Discipline Act 1957 s 45 (as amended) (see para 335 ante), subject to such modifications as the Secretary of State may by regulations prescribe (Army Act 1955 s 75D(1) (as so added); Air Force Act 1955 s 75D(1) (as so added); Naval Discipline Act 1957 s 47E(1) (as so added)). Such regulations are subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 s 75D(3) (as so added); Air Force Act 1955 s 75D(3) (as so added); Naval Discipline Act 1957 s 47E(3) (as so added). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see para 2 ante. As to the meaning of 'constable' see para 48 note 8 ante.

For these purposes, references to the 'relevant time' are:

- 71 (a) in relation to a person delivered into naval, military or air force custody following arrest under the Army Act 1955 s 186 (as amended) (see para 62 ante) or s 190A (as added) (see para 65 ante), the Air Force Act 1955 s 186 (as amended) (see para 62 ante) or s 190A (as added) (see para 65 ante), the Naval Discipline Act 1957 s 103 (as amended) (see para 65 ante) or s 105 (as amended) (see para 62 ante) or the Reserve Forces Act 1996 Sch 2 para 2 (see paras 62-63 ante) or otherwise following arrest by a constable, references to the time of the arrest (Army Act 1955 s 75D(2)(a) (as so added); Air Force Act 1955 s 75D(2)(a) (as so added); Naval Discipline Act 1957 s 47E(2)(a) (as so added));
- 72 (b) in relation to a person delivered into naval, military or air force custody following surrender under the Army Act 1955 s 188 (see para 64 ante), the Air Force Act 1955 s 188 (see para 64 ante), the Naval Discipline Act 1957 s 188 (sic: although the Naval Discipline Act 1957 refers to s 188 it is submitted that the reference should be to s 108) (see para 64 ante) or the Reserve Forces Act 1996 Sch 2 para 6 (see para 64 ante), references to the time of the surrender (Army Act 1955 s 75D(2)(b) (as so added); Air Force Act 1955 s 75D(2)(b) (as so added); Naval Discipline Act 1957 s 47E(2)(b) (as so added)).

For the meaning of 'relevant time' see further the Army Act 1955 s 75A(7) (as added); the Air Force Act 1955 s 75A(7) (as added); the Naval Discipline Act 1957 s 47B(7) (as added); and para 339 note 10 post.

7 For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post.

8 Ie under the provisions of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

9 Army Act 1955 s 75(2) (as substituted: see note 3 supra); Air Force Act 1955 s 75(2) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 47A(2) (as added: see note 3 supra).

10 Army Act 1955 s 75(3) (as substituted: see note 3 supra); Air Force Act 1955 s 75(3) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 47A(3) (as added: see note 3 supra).

UPDATE

338 Limitations on custody without charge

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to limitations on custody without charge, see now the Armed Forces Act 2006 ss 98, 103.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/B. CUSTODY/339. Authorisation of custody without charge.

339. Authorisation of custody without charge.

Where a person is arrested¹ the arrest, and any grounds on which he is being kept in naval, military and air force custody without being charged², must be reported as soon as practicable to his commanding officer³. Until such a report is made, the person may be kept in custody without being charged, but only if the person who made the arrest has reasonable grounds for believing that keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest, or to obtain such evidence by questioning him⁴.

After receiving such a report, the commanding officer must as soon as practicable determine⁵: (1) whether he has reasonable grounds for believing that keeping him in custody without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and that the investigation is being conducted diligently and expeditiously⁶; and (2) if so, whether to authorise the keeping of that person in custody⁷. The person to whom the report relates may be kept in custody for such period as is necessary to enable the commanding officer to make that determination⁸. Such an authorisation: (a) if given less than 12 hours⁹ after the relevant time¹⁰, must end not more than 12 hours after the relevant time¹¹; (b) if given not less than 12 but less than 36 hours after the relevant time, must end not more than 36 hours after the relevant time¹²; (c) if given not less than 36 but less than 48 hours after the relevant time, must end not more than 48 hours after the relevant time¹³.

A person must not be kept in custody later than 48 hours after the relevant time without being charged, unless such custody is extended¹⁴.

1 He is under the Army Act 1955 s 74 (as amended), the Air Force Act 1955 s 74 (as amended) or the Naval Discipline Act 1957 s 45 (as amended): see paras 335-336 ante.

2 As to when a person is treated as charged see para 338 note 3 ante.

3 Army Act 1955 s 75A(1) (s 75A added by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act 1955 s 75A(1) (s 75A added by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47B(1) (s 47B added by the Armed Forces Discipline Act 2000 s 1(3)). For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post. As to the review of the keeping of a person in custody see para 340 post.

4 Army Act 1955 s 75A(2) (as added: see note 3 supra); Air Force Act 1955 s 75A(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(2) (as added: see note 3 supra).

5 Army Act 1955 s 75A(3) (as added: see note 3 supra); Air Force Act 1955 s 75A(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(3) (as added: see note 3 supra).

6 Army Act 1955 s 75A(3)(a), (4) (as added: see note 3 supra); Air Force Act 1955 s 75A(3)(a), (4) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(3)(a), (4) (as added: see note 3 supra).

7 Army Act 1955 s 75A(3)(b), (4) (as added: see note 3 supra); Air Force Act 1955 s 75A(3)(b), (4) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(3)(b), (4) (as added: see note 3 supra).

8 Army Act 1955 s 75A(3) (as added: see note 3 supra); Air Force Act 1955 s 75A(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(3) (as added: see note 3 supra).

9 Any reference in the Army Act 1955 ss 75A-75C (as added), the Air Force Act 1955 ss 75A-75C (as added) or the Naval Discipline Act 1957 ss 47B-47D (as added) (see para 340 et seq post) to a period of time is to be treated as approximate only: Army Act 1955 s 75E(2) (s 75E added by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act 1955 s 75E(2) (s 75E added by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47F(2) (s 47F added by the Armed Forces Discipline Act 2000 s 1(3)).

10 'The relevant time', in relation to a person arrested under the Army Act 1955 s 74 (as amended), the Air Force Act 1955 s 74 (as amended) (see para 336 ante) or the Naval Discipline Act 1957 s 45 (as amended) (see para 335 ante), means the time of the arrest: Army Act 1955 s 75A(7) (as added: see note 3 supra); Air Force Act 1955 s 75A(7) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(7) (as added: see note 3 supra). See also para 338 note 6 ante.

11 Army Act 1955 s 75A(5)(a) (as added: see note 3 supra); Air Force Act 1955 75A(5)(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(5)(a) (as added: see note 3 supra).

12 Army Act 1955 s 75A(5)(b) (as added: see note 3 supra); Air Force Act 1955 75A(5)(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(5)(b) (as added: see note 3 supra).

13 Army Act 1955 s 75A(5)(c) (as added: see note 3 supra); Air Force Act 1955 75A(5)(c) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(5)(c) (as added: see note 3 supra).

14 Army Act 1955 s 75A(6) (as added: see note 3 supra); Air Force Act 1955 75A(6) (as added: see note 3 supra); Naval Discipline Act 1957 s 47B(6) (as added: see note 3 supra). The text refers to an extension of custody without charge in accordance with the Army Act 1955 s 75C (as added), the Air Force Act 1955 s 75C (as added) or the Naval Discipline Act 1957 s 47D (as added): see para 341 post.

UPDATE

339 Authorisation of custody without charge

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to authorisation of custody without charge, see now the Armed Forces Act 2006 s 99.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/B. CUSTODY/340. Review of custody by commanding officer.

340. Review of custody by commanding officer.

The commanding officer¹ of a person kept in kept in naval, military or air force custody² must review the keeping of that person in custody not later than the end of the period for which it is authorised³. A review may be postponed⁴:

- 268 (1) if, having regard to all the circumstances prevailing at the expiry of the last authorisation⁵, it is not practicable to carry out the review at that time⁶;
- 269 (2) without prejudice to the generality of head (1) above, if at that time⁷: (a) the person in custody is being questioned and the commanding officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned⁸; or (b) the commanding officer is not readily available⁹.

If a review is so postponed, it must be carried out as soon as practicable after the expiry of the last authorisation¹⁰; and the keeping in custody of the person to whom the review relates is, by virtue of this provision, authorised until that time¹¹.

1 For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post.

2 In accordance with the Army Act 1955 s 75A (as added), the Air Force Act 1955 s 75A (as added), or the Naval Discipline Act 1957 s 47B (as added): see para 339 ante.

3 Army Act 1955 s 75B(1) (s 75B added by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act 1955 s 75B(1) (s 75B added by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47C(1) (s 47C added by the Armed Forces Discipline Act 2000 s 1(3)).

The Army Act 1955 s 75A(4), (5) (as added), the Air Force Act 1955 s 75A(4), (5) (as added) and the Naval Discipline Act 1957 s 47B(4), (5) (as added) (see para 339 ante) apply on each review under the Army Act 1955 s 75B (as added), the Air Force Act 1955 s 75B (as added) or the Naval Discipline Act 1957 s 47C (as added) as they apply where a report is received under the Army Act 1955 s 75A(1) (as added), the Air Force Act 1955 s 75A(1) (as added) or the Naval Discipline Act 1957 s 47B(1) (as added) (see para 339 ante): Army Act 1955 s 75B(2) (as so added); Air Force Act 1955 s 75B(2) (as so added); Naval Discipline Act 1957 s 47C(2) (as so added).

4 Army Act 1955 s 75B(3) (as added: see note 3 supra); Air Force Act 1955 s 75B(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(3) (as added: see note 3 supra).

5 In under the Army Act 1955 s 75A(4) (as added), the Air Force Act 1955 s 75A(4) (as added), or the Naval Discipline Act 1957 s 47B(4) (as added): see para 339 ante.

6 Army Act 1955 s 75B(3)(a) (as added: see note 3 supra); Air Force Act 1955 s 75B(3)(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(3)(a) (as added: see note 3 supra).

7 Army Act 1955 s 75B(3)(b) (as added: see note 3 supra); Air Force Act 1955 s 75B(3)(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(3)(b) (as added: see note 3 supra).

8 Army Act 1955 s 75B(3)(b)(i) (as added: see note 3 supra); Air Force Act 1955 s 75B(3)(b)(i) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(3)(b)(i) (as added: see note 3 supra).

9 Army Act 1955 s 75B(3)(b)(ii) (as added: see note 3 supra); Air Force Act 1955 s 75B(3)(b)(ii) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(3)(b)(ii) (as added: see note 3 supra).

10 Army Act 1955 s 75B(4)(a) (as added: see note 3 supra); Air Force Act 1955 s 75B(4)(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(4)(a) (as added: see note 3 supra).

11 Army Act 1955 s 75B(4)(b) (as added: see note 3 supra); Air Force Act 1955 s 75B(4)(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 47C(4)(b) (as added: see note 3 supra).

UPDATE

340 Review of custody by commanding officer

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to review of custody by commanding officer, see now the Armed Forces Act 2006 s 100.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/B. CUSTODY/341. Extension of custody without charge.

341. Extension of custody without charge.

If, on an application by the commanding officer¹ of a person arrested², a judicial officer³ is satisfied that there are reasonable grounds for believing that the continued keeping of that person in naval, military or air force custody is justified⁴, the judicial officer may by order authorise the keeping of that person in custody⁵. A judicial officer may not hear an application unless the person to whom it relates has been informed in writing of the grounds for the application, and has been brought before him for the hearing⁶. The person to whom the application relates is entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented the judicial officer must adjourn the hearing to enable him to obtain representation, and he may be kept in custody during the adjournment⁷.

An application may be made⁸: (1) at any time before the end of 48 hours⁹ after the relevant time¹⁰; or (2) if it is not practicable for the application to be heard at the expiry of that period, as soon as practicable thereafter but not more than 96 hours after the relevant time¹¹. If an application is made more than 48 hours after the relevant time, and it appears to the judicial officer that it would have been reasonable for the commanding officer to make the application before the end of that period, the judicial officer must refuse the application¹². Where on an application relating to any person the judicial officer is not satisfied that there are reasonable grounds for believing that continuing to keep that person in custody is justified, he must refuse the application, or adjourn the hearing of it until a time not later than 48 hours after the relevant time¹³. The person to whom the application relates may be kept in custody during the adjournment¹⁴.

The period for which a judicial officer may authorise the keeping of a person in custody is such period, ending not more than 96 hours after the relevant time, as he thinks fit having regard to the evidence before him¹⁵. Where a judicial officer refuses an application at any time less than 48 hours after the relevant time, he may direct that the person to whom it relates forthwith be charged or released from custody¹⁶. Where a judicial officer refuses an application at any later time, he must direct that the person to whom it relates forthwith be charged or released from custody¹⁷.

1 For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post.

2 Ie under the Army Act 1955 s 74 (as amended), the Air Force Act 1955 s 74 (as amended), or the Naval Discipline Act 1957 s 45 (as amended): see paras 335-336 ante.

3 Judicial officers are appointed for the purposes of the Army Act 1955 and the Air Force Act 1955 by the Judge Advocate General (Army Act 1955 s 75L(1) (s 75L added by the Armed Forces Discipline Act 2000 s 7(1)); Air Force Act 1955 s 75L(1) (s 75L added by the Armed Forces Discipline Act 2000 s 7(1))), and for the purposes of the Naval Discipline Act 1957 by the Chief Naval Judge Advocate (Naval Discipline Act 1957 s 47M(1) (s 47M added by the Armed Forces Discipline Act 2000 s 7(2))). As to the Judge Advocate General see paras 446-447 post. As to the Chief Naval Judge Advocate see para 445 post.

No person may be appointed unless:

73 (1) he is qualified under the Army Act 1955 s 84B(2) (as added), the Air Force Act 1955 s 84B(2) (as added) (see para 484 post) or the Naval Discipline Act 1957 s 53B(2) (as added) (see para 453 post) for appointment as the judge advocate in relation to a court-martial (Army Act 1955 s 75L(2)(a) (as so added; and amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 para 35(1), (2), Sch 7 Pt 7); Air Force Act 1955 s 75L(2)(a) (as so added; and amended by the

Armed Forces Act 2001 Sch 6 para 35(1), (2), Sch 7 Pt 7); Naval Discipline Act 1957 s 47M(2)(a) (as so added; and amended by the Armed Forces Act 2001 Sch 6 para 36(1), (2), Sch 7 Pt 7));

- 74 (2) he has, and has had for at least five years, in any Commonwealth country or any colony, rights and duties similar to those of a barrister or solicitor in England and Wales and is subject to punishment or disability for breach of professional rules (Army Act 1955 s 75L(2)(b) (as so added); Air Force Act 1955 s 75L(2)(b) (as so added); Naval Discipline Act 1957 s 47M(2)(b) (as so added)); or
- 75 (3) immediately before his appointment, he holds a relevant judicial appointment in any Commonwealth country or colony and has professional or educational qualifications in law which appear to the Judge Advocate General or the Chief Naval Judge Advocate, as the case may be, to be appropriate (Army Act 1955 s 75L(2)(c) (as so added; and amended by the Armed Forces Act 2001 Sch 6 para 35(1), (2)); Air Force Act 1955 s 75L(2)(c) (as so added; and amended by the Armed Forces Act 2001 Sch 6 para 35(1), (2)); Naval Discipline Act 1957 s 47M(2)(c) (as so added; and amended by the Armed Forces Act 2001 Sch 6 para 36(1), (2))).

'Relevant judicial appointment', in relation to a Commonwealth country or colony, means an appointment by virtue of which he is capable of exercising, in criminal proceedings in that country or colony, functions similar to the functions exercisable, in criminal proceedings in England and Wales, by a judge of the Supreme Court, a circuit judge or a District Judge (Magistrates' Courts): Army Act 1955 s 75L(3) (added by the Armed Forces Act 2001 Sch 6 para 35(1), (3)); Air Force Act 1955 s 75L(3) (added by the Armed Forces Act 2001 Sch 6 para 35(1), (3)); Naval Discipline Act 1957 s 47M(3) (added by the Armed Forces Act 2001 Sch 6 para 36(1), (3)). As to judges of the Supreme Court see COURTS vol 10 (Reissue) para 515 et seq; as to circuit judges see COURTS vol 10 (Reissue) para 522 et seq; and as to District Judges (Magistrates' Courts) see MAGISTRATES vol 29(2) (Reissue) para 572 et seq. As to the meaning of 'Commonwealth country' see para 20 note 6 ante. As to the meaning of 'colony' see para 20 note 4 ante. As to naval courts-martial see para 448 et seq post; and as to military and air force courts-martial see para 480 et seq post.

4 The continued keeping of a person in naval, military or air force custody is justified only if keeping him in custody without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him, and the investigation is being conducted diligently and expeditiously: Army Act 1955 s 75C(4) (s 75C added by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act s 75C(4) (s 75C added by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47D(4) (s 47D added by the Armed Forces Discipline Act 2000 s 1(3)).

5 Army Act 1955 s 75C(1) (as added: see note 4 supra); Air Force Act 1955 75C(1) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(1) (as added: see note 4 supra). As to rules made by the Secretary of State with respect to proceedings on an application see the Army Act 1955 s 75M (as added; prospectively amended); the Air Forces Act 1955 s 75M (as added; prospectively amended); the Naval Discipline Act 1957 s 47N (as added; prospectively amended); and para 347 post. As to the Secretary of State see para 2 ante.

6 Army Act 1955 s 75C(2) (as added: see note 4 supra); Air Force Act 1955 75C(2) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(2) (as added: see note 4 supra).

7 Army Act 1955 s 75C(3) (as added: see note 4 supra); Air Force Act 1955 s 75C(3) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(3) (as added: see note 4 supra).

8 Army Act 1955 s 75C(5) (as added: see note 4 supra); Air Force Act 1955 s 75C(5) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(5) (as added: see note 4 supra).

9 As to periods of time see para 339 note 9 ante.

10 Army Act 1955 s 75C(5)(a) (as added: see note 4 supra); Air Force Act 1955 s 75C(5)(a) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(5)(a) (as added: see note 4 supra). For the meaning of 'the relevant time' see para 338 note 6 ante.

11 Army Act 1955 s 75C(5)(b) (as added: see note 4 supra); Air Force Act 1955 s 75C(5)(b) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(5)(b) (as added: see note 4 supra). Where head (2) in the text applies, an authorisation on a review under the Army Act 1955 s 75B (as added), the Air Force Act 1955 s 75B (as added) or the Naval Discipline Act 1957 s 47C (as added) (see para 340 ante) may be for a period ending more than 48 hours after the relevant time, but may not be for a period of more than six hours or for a period ending more than 96 hours after the relevant time: Army Act 1955 s 75C(6) (as so added); Air Force Act 1955 s 75C(6) (as so added); Naval Discipline Act 1957 s 47D(6) (as so added).

12 Army Act 1955 s 75C(7) (as added: see note 4 supra); Air Force Act 1955 75C(7) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(7) (as added: see note 4 supra). See the text to notes 16-17 infra.

13 Army Act 1955 s 75C(8) (as added: see note 4 supra); Air Force Act 1955 75C(8) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(8) (as added: see note 4 supra).

14 Army Act 1955 s 75C(9) (as added: see note 4 supra); Air Force Act 1955 75C(9) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(9) (as added: see note 4 supra). There appears to be no obligation on the judicial officer to order that the person is kept in custody for the full period which he has the power to order.

15 Army Act 1955 s 75C(10) (as added: see note 4 supra); Air Force Act 1955 75C(10) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(10) (as added: see note 4 supra).

16 Army Act 1955 s 75C(11) (as added: see note 4 supra); Air Force Act 1955 75C(11) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(11) (as added: see note 4 supra). As to when a person is treated as charged see para 338 note 3 ante.

17 Army Act 1955 s 75C(12) (as added: see note 4 supra); Air Force Act 1955 75C(12) (as added: see note 4 supra); Naval Discipline Act 1957 s 47D(12) (as added: see note 4 supra).

UPDATE

341 Extension of custody without charge

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to extension of custody without charge, see now the Armed Forces Act 2006 ss 101, 102.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/B. CUSTODY/342. Power to make regulations as to custody without charge.

342. Power to make regulations as to custody without charge.

The Defence Council¹ may by regulations make provision² with respect to:

- 270 (1) the delegation by the commanding officer³ of a person in naval, military or air force custody of any of the commanding officer's functions⁴;
- 271 (2) circumstances in which a person kept in custody without being charged⁵ is to be informed of, or given an opportunity to make representations about, any matter⁶;
- 272 (3) the keeping of written records relating to compliance with certain requirements⁷.

1 As to the Defence Council see para 2 ante.

2 Army Act 1955 s 75E(1) (s 75E added by the Armed Forces Discipline Act 2000 s 1(1)); Air Force Act 1955 s 75E(1) (s 75E added by the Armed Forces Discipline Act 2000 s 1(2)); Naval Discipline Act 1957 s 47F(1) (s 47F added by the Armed Forces Discipline Act 2000 s 1(3)). Such regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work.

3 For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post.

4 Army Act 1955 s 75E(1)(a) (as added: see note 2 supra); Air Force Act 1955 s 75E(1)(a) (as added: see note 2 supra); Naval Discipline Act 1957 s 47F(1)(a) (as added: see note 2 supra). The functions referred to are those under the Army Act 1955 s 75 (as substituted), ss 75A-75C (as added), the Air Force Act 1955 s 75 (as substituted), ss 75A-75C (as added), or the Naval Discipline Act 1957 ss 47A-47D (as added): see paras 338-341 ante.

5 As to when a person is treated as charged see para 338 note 3 ante.

6 Army Act 1955 s 75E(1)(b) (as added: see note 2 supra); Air Force Act 1955 s 75E(1)(b) (as added: see note 2 supra); Naval Discipline Act 1957 s 47F(1)(b) (as added: see note 2 supra).

7 Army Act 1955 s 75E(1)(c) (as added: see note 2 supra); Air Force Act 1955 s 75E(1)(c) (as added: see note 2 supra); Naval Discipline Act 1957 s 47F(1)(c) (as added: see note 2 supra). The requirements referred to are those under the Army Act 1955 s 75 (as substituted), ss 75A-75C (as added), the Air Force Act 1955 s 75 (as substituted), ss 75A-75C (as added), or the Naval Discipline Act 1957 ss 47A-47D (as added), or of regulations under head (2) in the text: see paras 338-341 ante.

UPDATE

342 Power to make regulations as to custody without charge

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the power to make regulations as to custody without charge, see now the Armed Forces Act 2006 s 104; and as to such regulations, see the Armed Forces (Custody Without Charge) Regulations 2009, SI 2009/1097.

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343. Custody after charge.

Where a person subject to naval, military or air force law ('the accused')¹ is kept in naval, military or air force custody after being charged² with an offence³, he must be brought before a judicial officer⁴ as soon as practicable⁵. The judicial officer may by order authorise the keeping of the accused in custody⁶, but only if:

- 273 (1) he is satisfied that there are substantial grounds for believing that the accused, if released from custody, would⁷:
- .30
- 42. (a) fail to attend any hearing in the proceedings against him⁸;
- 43. (b) commit an offence while released⁹; or
- 44. (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person¹⁰;
- .31
- 274 (2) he is satisfied that the accused should be kept in custody for his own protection or, if he is under 17 years of age, for his own welfare¹¹;
- 275 (3) he is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required¹² for want of time since the accused was charged with the offence¹³; or
- 276 (4) the accused, having been released from custody after being charged with the offence, has deserted or absented himself without leave¹⁴.

In taking the decision required by head (1)(a) above, the judicial officer must have regard to such of the following considerations as appear to him to be relevant¹⁵:

- 277 (i) the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it)¹⁶;
- 278 (ii) the character, antecedents, associations and social ties of the accused¹⁷;
- 279 (iii) the accused's behaviour on previous occasions while charged with an offence and released from custody or while on bail in criminal proceedings¹⁸;
- 280 (iv) the strength of the evidence that the accused committed the offence¹⁹,

as well as any other considerations which appear to be relevant²⁰.

If (A) the accused is charged with a specified offence²¹; (B) representations are made as to any of the matters mentioned in head (1) above; and (C) the judicial officer decides not to authorise the keeping of the accused in custody, then he must state the reasons for his decision and must cause those reasons to be included in the record of the proceedings²².

1 As to the persons subject to naval discipline, military or air force law see para 306 et seq ante.

2 As to when a person is treated as charged see para 338 note 3 ante.

3 I.e. an offence against the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended) or the Naval Discipline Act 1957 Pt II (ss 45-92 (as amended)).

4 As to judicial officers see para 341 note 3 ante.

5 Army Act 1955 s 75F(1) (s 75F added by the Armed Forces Discipline Act 2000 s 2(1)); Air Force Act 1955 s 75F(1) (s 75F added by the Armed Forces Discipline Act 2000 s 2(2)); Naval Discipline Act 1957 s 47G(1) (s 47G added by the Armed Forces Discipline Act 2000 s 2(3)). As to rules made by the Secretary of State with respect to proceedings see the Army Act 1955 s 75M (as added; prospectively amended); the Air Forces Act 1955 s 75M (as added; prospectively amended); the Naval Discipline Act 1957 s 47N (as added; prospectively amended); and para 347 post. As to the Secretary of State see para 2 ante.

The Army Act 1955 s 75F(1) (as added), the Air Force Act 1955 s 75F(1) (as added) and the Naval Discipline Act 1957 s 47G(1) (as added) do not apply where the accused is charged at a time when he is kept in custody by reason of an award or sentence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or of an order under the Army Act 1955 s 75F(2) (as added), the Air Force Act 1955 s 75F(2) (as added) or the Naval Discipline Act 1957 s 47G(2) (as added) (see the text to notes 6-14 infra), unless that reason ceases to apply: Army Act 1955 s 75F(8) (as so added); Air Force Act 1955 s 75F(8) (as so added); Naval Discipline Act 1957 s 47G(8) (as so added).

6 Army Act 1955 s 75F(2) (as added: see note 5 supra); Air Force Act 1955 s 75F(2) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2) (as added: see note 5 supra).

The period for which a judicial officer may, by such an order, authorise the keeping of the accused in custody is such period, ending (subject to the Army Act 1955 s 75G(7) (as added), the Air Force Act 1955 s 75G(7) (as added) or the Naval Discipline Act 1957 s 47H(7) (as added) (see para 344 post)) not later than eight days after the day on which the order is made, as he thinks fit having regard to the evidence before him: Army Act 1955 s 75F(6) (as so added); Air Force Act 1955 s 75F(6) (as so added); Naval Discipline Act 1957 s 47G(6) (as so added).

Such an order does not authorise the keeping of the accused in custody if: (1) the accused is subsequently released from custody, at any time after his release; or (2) at any time after the award of punishment on summary dealing with the charge, or on summary trial of the charge, as the case may be, or any amended or substituted charge: Army Act 1955 s 75F(7) (as so added); Air Force Act 1955 s 75F(7) (as so added); Naval Discipline Act 1957 s 47G(7) (as so added). As to summary proceedings see para 348 et seq post.

As to review of custody after charge see para 344 post.

7 Army Act 1955 s 75F(2)(a) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(a) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(a) (as added: see note 5 supra).

8 Army Act 1955 s 75F(2)(a)(i) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(a)(i) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(a)(i) (as added: see note 5 supra).

9 Army Act 1955 s 75F(2)(a)(ii) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(a)(ii) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(a)(ii) (as added: see note 5 supra).

10 Army Act 1955 s 75F(2)(a)(iii) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(a)(iii) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(a)(iii) (as added: see note 5 supra).

11 Army Act 1955 s 75F(2)(b) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(b) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(b) (as added: see note 5 supra).

12 In for the purposes of the Army Act 1955 s 75F(2) (as added), the Air Force Act 1955 s 75F(2) (as added) or the Naval Discipline Act 1957 s 47G(2) (as added).

13 Army Act 1955 s 75F(2)(c) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(c) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(c) (as added: see note 5 supra).

14 Army Act 1955 s 75F(2)(d) (as added: see note 5 supra); Air Force Act 1955 s 75F(2)(d) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(2)(d) (as added: see note 5 supra). As to the offences of desertion and absence without leave see para 404 post.

15 Army Act 1955 s 75F(3) (as added: see note 5 supra); Air Force Act 1955 s 75F(3) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(3) (as added: see note 5 supra).

16 Army Act 1955 s 75F(3)(a) (as added: see note 5 supra); Air Force Act 1955 s 75F(3)(a) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(3)(a) (as added: see note 5 supra).

17 Army Act 1955 s 75F(3)(b) (as added: see note 5 supra); Air Force Act 1955 s 75F(3)(b) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(3)(b) (as added: see note 5 supra).

18 Army Act 1955 s 75F(3)(c) (as added: see note 5 supra); Air Force Act 1955 s 75F(3)(c) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(3)(c) (as added: see note 5 supra).

19 Army Act 1955 s 75F(3)(d) (as added: see note 5 supra); Air Force Act 1955 s 75F(3)(d) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(3)(d) (as added: see note 5 supra).

20 Army Act 1955 s 75F(3) (as added: see note 5 supra); Air Force Act 1955 s 75F(3) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(3) (as added: see note 5 supra).

21 In any offence under the Army Act 1955 s 70 (as amended; prospectively further amended), the Air Force Act 1955 s 70 (as amended; prospectively further amended), or the Naval Discipline Act 1957 s 42 (as amended; prospectively further amended) (see para 422 post), where the corresponding civil offence is murder, manslaughter, rape, attempted murder or attempted rape: see the Army Act 1955 s 75F(5) (as added: see note 5 supra); the Air Force Act 1955 s 75F(5) (as added: see note 5 supra); and the Naval Discipline Act 1957 s 47G(5) (as added: see note 5 supra).

22 Army Act 1955 s 75F(4) (as added: see note 5 supra); Air Force Act 1955 s 75F(4) (as added: see note 5 supra); Naval Discipline Act 1957 s 47G(4) (as added: see note 5 supra).

UPDATE

343 Custody after charge

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to custody after charge, see now the Armed Forces Act 2006 ss 105, 106.

NOTE 4--A commanding officer who potentially retains prosecutorial functions is not a suitable judicial officer for the purposes of the right to a fair hearing by an independent and impartial tribunal: Application 55434/00 *Boyle v United Kingdom* (2008) 47 EHRR 483, [2008] All ER (D) 02 (Jan), ECtHR.

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344. Review of custody after charge.

Where the keeping of the accused in naval, military or air force custody is authorised by an order¹, it must be reviewed by a judicial officer² not later than the end of the period for which it is authorised³. If at any time it appears to the accused's commanding officer⁴ that the grounds on which such an order was made have ceased to exist, he must release the accused from custody, or request a review⁵. Where such a request is made, a review must be carried out as soon as practicable⁶.

At the first review, the accused may support an application for release from custody with any argument as to fact or law that he desires, whether or not he has advanced that argument previously⁷. At subsequent reviews, the judicial officer need not hear arguments as to fact or law which have been heard previously⁸. On a review at a hearing at which the accused is legally represented, the judicial officer may, if the accused consents, authorise the keeping of the accused in custody for a period of not more than 28 clear days⁹.

1 le an order under the Army Act 1955 s 75F(2) (as added), the Air Force Act 1955 s 75F(2) (as added), or the Naval Discipline Act 1957 s 47G(2) (as added): see para 343 ante.

2 As to judicial officers see para 341 note 3 ante.

3 Army Act 1955 s 75G(1) (s 75G added by the Armed Forces Discipline Act 2000 s 3(1)); Air Force Act 1955 s 75G(1) (s 75G added by the Armed Forces Discipline Act 2000 s 3(2)); Naval Discipline Act 1957 s 47H(1) (s 47H added by the Armed Forces Discipline Act 2000 s 3(3)). As to rules made by the Secretary of State with respect to proceedings on a review see the Army Act 1955 s 75M (as added; prospectively amended); the Air Forces Act 1955 s 75M (as added; prospectively amended); the Naval Discipline Act 1957 s 47N (as added; prospectively amended); and para 347 post. As to the Secretary of State see para 2 ante.

The Army Act 1955 s 75F(2)-(6) (as added), the Air Force Act 1955 s 75F(2)-(6) (as added) and the Naval Discipline Act 1957 s 47G(2)-(6) (as added) (see para 343 ante) apply on a review as they apply where the accused is brought before a judicial officer under the Army Act 1955 s 75F(1) (as added), the Air Force Act 1955 s 75F(1) (as added) and the Naval Discipline Act 1957 s 47G(1) (as added) (see para 343 ante): Army Act 1955 s 75G(4) (as so added); Air Force Act 1955 s 75G(4) (as so added); Naval Discipline Act 1957 s 47H(4) (as so added).

4 For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post.

5 Army Act 1955 s 75G(2) (as added: see note 3 supra); Air Force Act 1955 s 75G(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 47H(2) (as added: see note 3 supra). 'Review' means a review under the Army Act 1955 s 75G(1) (as added), the Air Force Act 1955 s 75G(1) (as added) and the Naval Discipline Act 1957 s 47H(1) (as added): Army Act 1955 s 75G(8) (as so added); Air Force Act 1955 s 75G(8) (as so added); Naval Discipline Act 1957 s 47H(8) (as so added).

6 Army Act 1955 s 75G(3) (as added: see note 3 supra); Air Force Act 1955 s 75G(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47H(3) (as added: see note 3 supra).

7 Army Act 1955 s 75G(5) (as added: see note 3 supra); Air Force Act 1955 s 75G(5) (as added: see note 3 supra); Naval Discipline Act 1957 s 47H(5) (as added: see note 3 supra).

8 Army Act 1955 s 75G(6) (as added: see note 3 supra); Air Force Act 1955 s 75G(6) (as added: see note 3 supra); Naval Discipline Act 1957 s 47H(6) (as added: see note 3 supra).

9 Army Act 1955 s 75G(7) (as added: see note 3 supra); Air Force Act 1955 s 75G(7) (as added: see note 3 supra); Naval Discipline Act 1957 s 47H(7) (as added: see note 3 supra).

Where the accused is kept in custody under an order under the Army Act 1955 s 75F(2) (as added), the Air Force Act 1955 s 75F(2) (as added) or the Naval Discipline Act 1957 s 47G(2) (as added) (see para 343 ante) at any time after the commencement of his trial by court-martial, the Army Act 1955 s 75G (as added), the Air Force Act 1955 s 75G (as added) and the Naval Discipline Act 1957 s 47H (as added) (and the Army Act 1955 s 75F (as added), the Air Force Act 1955 s 75F (as added) and the Naval Discipline Act 1957 s 47G (as added) (see para 343 ante) as applied by the Army Act 1955 s 75G (as added), the Air Force Act 1955 s 75G (as added) and the Naval Discipline Act 1957 s 47H (as added)) apply with modifications: Army Act 1955 s 75H(1) (s 75H added by the Armed Forces Discipline Act 2000 s 4(1)); Air Force Act 1955 s 75H(1) (s 75H added by the Armed Forces Discipline Act 2000 s 4(2)); Naval Discipline Act 1957 s 47J(1) (s 47J added by the Armed Forces Discipline Act 2000 s 4(3)). For the modifications see the Army Act 1955 s 75H(2)-(5) (as so added); the Air Force Act 1955 s 75H(2)-(5) (as so added); and the Naval Discipline Act 1957 s 47J(2)-(5) (as so added). As from a day to be appointed, the Army Act 1955 s 75H(2) (as added) and the Air Force Act 1955 s 75H(2) (as added) are prospectively amended by the Armed Forces Act 2001 s 29, Sch 4 para 1; and the Naval Discipline Act 1957 s 47J(2) is prospectively amended by the Armed Forces Act 2001 Sch 4 para 8. At the date at which this volume states the law no such day had been appointed.

The Army Act 1955 s 75H(1) (as added), the Air Force Act 1955 s 75H(1) (as added) and the Naval Discipline Act 1957 s 47J(1) (as added) cease to apply (but without prejudice to any order already made by virtue of those provisions) if the court-martial is dissolved: Army Act 1955 s 75H(6) (as so added); Air Force Act 1955 s 75H(6) (as so added); Naval Discipline Act 1957 s 47J(6) (as so added). As to naval courts-martial see para 448 et seq post; and as to military and air force courts-martial see para 480 et seq post.

UPDATE

344 Review of custody after charge

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to review of custody after charge, see now the Armed Forces Act 2006 s 108.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (vi) Arrest and Custody/B. CUSTODY/345. Release from custody after charge or during proceedings.

345. Release from custody after charge or during proceedings.

Where, at a hearing¹ or on a review², the judicial officer³ or judge advocate⁴, as the case may be, does not authorise keeping the accused in naval, military or air force custody⁵, the accused must be released from custody forthwith⁶. However, in certain circumstances⁷ the accused may be required to comply, before release or later, with such requirements as appear to the judicial officer or judge advocate to be necessary for the purpose of securing his attendance at any hearing in connection with the offence to which the charge relates⁸. A person on whom such a requirement has been imposed is guilty of an offence if he fails without reasonable cause to attend any hearing to which the requirement relates⁹. A person guilty of such an offence is liable¹⁰ to imprisonment for a term not exceeding two years or any less punishment¹¹ provided by the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955¹².

1 le under the Army Act 1955 s 75F(1) (as added), the Air Force Act 1955 s 75F(1) (as added) or the Naval Discipline Act 1957 s 47G(1) (as added): see para 343 ante.

2 le under the Army Act 1955 s 75G(1) (as added), the Air Force Act 1955 s 75G(1) (as added) or the Naval Discipline Act 1957 s 47H(1) (as added): see para 344 ante.

3 As to judicial officers see para 341 note 3 ante.

4 As to judge advocates see para 484 post.

5 Army Act 1955 s 75J(1) (s 75J added by the Armed Forces Discipline Act 2000 s 5(1)); Air Force Act 1955 s 75J(1) (s 75J added by the Armed Forces Discipline Act 2000 s 5(2)); Naval Discipline Act 1957 s 47K(1) (s 47K added by the Armed Forces Discipline Act 2000 s 5(3)).

6 Army Act 1955 s 75J(2)(a) (as added: see note 5 supra); Air Force Act 1955 s 75J(2)(a) (as added: see note 5 supra); Naval Discipline Act 1957 s 47K(2)(a) (as added: see note 5 supra).

7 le if the accused: (1) is subject to military law by virtue of the Army Act 1955 s 131 (as amended), s 205(1)(ea) (as added), s 205(1)(eb) (as added), s 205(1)(g) (as amended) or s 205(1)(h) (as amended); (2) is subject to air force law by virtue of the Air Force Act 1955 s 131 (as amended), s 205(1)(ff) (as added), s 205(1)(h) (as amended) or s 205(1)(i) (as amended); (3) is a person to whom the Naval Discipline Act 1957 s 51 (as amended) applies or is subject to naval discipline by virtue of s 111(3) (as substituted) or s 111(5) (as amended): see paras 306-308, 335 ante.

8 Army Act 1955 s 75J(2)(b) (as added: see note 5 supra); Air Force Act 1955 s 75J(2)(b) (as added: see note 5 supra); Naval Discipline Act 1957 s 47K(2)(b) (as added: see note 5 supra).

As from a day to be appointed, on application made by or on behalf of the accused, or by the commanding officer of the accused, any requirement so imposed (including such a requirement as previously varied) may be varied or discharged by a judicial officer or, where the Army Act 1955 s 75H(2) (as added; prospectively amended), the Air Force Act 1955 s 75H(2) (as added; prospectively amended) or the Naval Discipline Act 1957 s 47J(2) (as added; prospectively amended) has effect, by the judge advocate in relation to the court-martial: Army Act 1955 s 75J(2A) (prospectively added by the Armed Forces Act 2001 s 29, Sch 4 para 2); Air Force Act 1955 s 75J(2A) (prospectively added by the Armed Forces Act 2001 Sch 4 para 2); Naval Discipline Act 1957 s 47K(2A) (prospectively added by the Armed Forces Act 2001 Sch 4 para 9). At the date at which this volume states the law no such day had been appointed. For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post. As to naval courts-martial see para 448 et seq post; and as to military and air force courts-martial see para 480 et seq post.

9 Army Act 1955 s 75J(3) (as added: see note 5 supra); Air Force Act 1955 s 75J(3) (as added: see note 5 supra); Naval Discipline Act 1957 s 47K(3) (as added: see note 5 supra).

10 le on conviction by court-martial: see the Army Act 1955 s 75J(4) (as added: see note 5 supra); and the Air Force Act 1955 s 75J(4) (as added: see note 5 supra).

11 As to the punishments which may be imposed see the Army Act 1955 s 71 (as substituted and amended); the Air Force Act 1955 s 71 (as substituted and amended); the Naval Discipline Act 1957 s 43 (as substituted and amended); and para 424 et seq post.

12 Army Act 1955 s 75J(4) (as added: see note 5 supra); Air Force Act 1955 s 75J(4) (as added: see note 5 supra); Naval Discipline Act 1957 s 47K(4) (as added: see note 5 supra). For the purposes of the Naval Discipline Act 1957, any such offence is treated as if it were an offence under Pt I (ss 1-43B) (as amended): see s 47K(5) (as so added).

UPDATE

345 Release from custody after charge or during proceedings

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to release from custody after charge, see now the Armed Forces Act 2006 s 107. As to custody during proceedings, see s 109. As to the evidential burden as respects excuses for offences under s 107, see s 325.

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346. Arrest during proceedings.

The commanding officer¹ of a person subject to naval discipline, military or air force law ('the accused')² who³:

- 281 (1) has been charged with⁴, or is awaiting sentence for, an offence against any provision of Part II of the Army Act 1955⁵, Part II of the Air Force Act 1955⁶ or Part I of the Naval Discipline Act 1957⁷; and
- 282 (2) is not in naval, military or air force custody⁸,

may, if satisfied that taking the accused into custody is justified⁹, give orders for his arrest¹⁰.

Between the commencement of the trial of the accused by court-martial and the announcement of the court-martial's finding on the charge or every charge against the accused¹¹, the judge advocate¹² may, if satisfied that taking the accused into custody is justified, direct the arrest of the accused¹³. Any person with power to arrest the accused for an offence against a provision of the Army Act 1955 or the Air Force Act 1955 or under Part I of the Naval Discipline Act 1957 has the same power, exercisable in the same way, to arrest him pursuant to a direction¹⁴.

1 For the meaning of 'commanding officer' for the purposes of the Naval Discipline Act 1957 see para 348 note 2 post; and for the meaning of 'commanding officer' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 353 note 4 post.

2 As to the persons subject to naval discipline, military or air force law see para 306 et seq ante.

3 Army Act 1955 s 75K(1) (s 75K added by the Armed Forces Discipline Act 2000 s 6(1)); Air Force Act 1955 s 75K(1) (s 75K added by the Armed Forces Discipline Act 2000 s 6(2)); Naval Discipline Act 1957 s 47L(1) (s 47L added by the Armed Forces Discipline Act 2000 s 6(3)).

4 As to when a person is treated as charged see para 338 note 3 ante.

5 Ie the Army Act 1955 Pt II (ss 24-143) (as amended).

6 Ie the Air Force Act 1955 Pt II (ss 24-143) (as amended).

7 Army Act 1955 s 75K(1)(a) (as added: see note 3 supra); Air Force Act 1955 s 75K(1)(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(1)(a) (as added: see note 3 supra). The text refers to the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended).

8 Army Act 1955 s 75K(1)(b) (as added: see note 3 supra); Air Force Act 1955 s 75K(1)(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(1)(b) (as added: see note 3 supra).

9 Taking the accused into custody is justified if there are substantial grounds for believing that, if not taken into custody, he would: (1) fail to attend any hearing in the proceedings against him; (2) commit an offence; (3) injure himself; or (4) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person: Army Act 1955 s 75K(5) (as added: see note 3 supra); Air Force Act 1955 s 75K(5) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(5) (as added: see note 3 supra).

Taking the accused into custody is also justified if: (a) the accused is subject to military or air force law only by virtue of the Army Act 1955 s 131 (as amended) or the Air Force Act 1955 s 131 (as amended), or is a person to whom the Naval Discipline Act 1957 s 51 (as amended) (see para 335 ante) applies; and (b) he has failed to attend any hearing in the proceedings against him: see the Army Act 1955 s 75K(6) (as so added); the Air Force Act 1955 s 75K(6) (as so added); and the Naval Discipline Act 1957 s 47L(6) (as so added).

10 Army Act 1955 s 75K(1) (as added: see note 3 supra); Air Force Act 1955 s 75K(1) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(1) (as added: see note 3 supra). A person so arrested, if kept in custody: (1) must be treated as being in custody under an order under the Army Act 1955 s 75F(2) (as added), the Air Force Act s 75F(2) (as added) or the Naval Discipline Act 1957 s 47G(2) (as added) (see para 343 ante); and (2) must be brought as soon as practicable before a judicial officer to be dealt with as on a review under the Army Act 1955 s 75G(1) (as added), the Air Force Act 1955 s 75G(1) (as added) or the Naval Discipline Act 1957 s 47H(1) (as added) (see para 344 ante); Army Act 1955 s 75K(7) (as so added); Air Force Act 1955 s 75K(7) (as so added); Naval Discipline Act 1957 s 47L(7) (as so added). As to judicial officers see para 341 note 3 ante.

11 Army Act 1955 s 75K(2) (as added: see note 3 supra); Air Force Act 1955 s 75K(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(2) (as added: see note 3 supra).

12 As from a day to be appointed, where on an adjournment of the court-martial the judge advocate has ordered that during the adjournment matters relating to custody are to be dealt with by a judicial officer, the references in the Army Act 1955 s 75K(3) (as added), the Air Force Act 1955 s 75K(3) (as added) and the Naval Discipline Act 1957 s 47L(3) (as added) to the judge advocate have effect as references to a judicial officer: Army Act 1955 s 75K(3A) (prospectively added by the Armed Forces Act 2001 Sch 4 para 3(1), (2)); Air Force Act 1955 s 75K(3A) (prospectively added by the Armed Forces Act 2001 Sch 4 para 3(1), (2)); Naval Discipline Act 1957 s 47L(3A) (prospectively added by the Armed Forces Act 2001 Sch 4 para 10(1), (2)). At the date at which this volume states the law no such day had been appointed. As to judge advocates see para 484 post.

13 Army Act 1955 s 75K(3) (as added: see note 3 supra); Air Force Act 1955 s 75K(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(3) (as added: see note 3 supra). The Army Act 1955 s 75K(3) (as added), the Air Force Act 1955 s 75K(3) (as added) and the Naval Discipline Act 1957 s 47L(3) (as added) cease to apply (but without prejudice to any direction already given) if the court-martial is dissolved: Army Act 1955 s 75K(4) (as so added); Air Force Act 1955 s 75K(4) (as so added); Naval Discipline Act 1957 s 47L(4) (as so added).

A person so arrested: (1) must be treated as being in custody under an order under the Army Act 1955 s 75F(2) (as added), the Air Force Act 1955 s 75F(2) (as added) or the Naval Discipline Act 1957 s 47G(2) (as added) (see para 343 ante); and (2) must be brought as soon as practicable before the judge advocate on whose direction the arrest was made (unless already before him) and must be dealt with by him as on a review under the Army Act 1955 s 75G(1) (as added), the Air Force Act s 75G(1) (as added) or the Naval Discipline Act 1957 s 47H(1) (as added) (see para 344 ante); Army Act 1955 s 75K(8) (as so added); Air Force Act 1955 s 75K(8) (as so added); Naval Discipline Act 1957 s 47L(8) (as so added).

As from a day to be appointed, head (2) supra is amended so as to provide that a person arrested must be brought as soon as practicable before the judge advocate on whose direction the arrest was made or any judicial officer (unless already before the judge advocate or a judicial officer), and must be dealt with by him as on a review under the Army Act 1955 s 75G(1) (as added), the Air Force Act s 75G(1) (as added) or the Naval Discipline Act 1957 s 47H(1) (as added); Army Act 1955 s 75K(8) (as so added; s 75K(8) prospectively amended by the Armed Forces Act 2001 Sch 4 para 3(1), (3)); Air Force Act 1955 s 75K(8) (as so added; s 75K(8) prospectively amended by the Armed Forces Act 2001 Sch 4 para 3(1), (3)); Naval Discipline Act 1957 s 47L(8) (as so added; s 47L(8) prospectively amended by the Armed Forces Act 2001 Sch 4 para 10(1), (3)). At the date at which this volume states the law no such day had been appointed.

14 Army Act 1955 s 75K(3) (as added: see note 3 supra); Air Force Act 1955 s 75K(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47L(3) (as added: see note 3 supra).

UPDATE

346 Arrest during proceedings

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to arrest during proceedings, see now the Armed Forces Act 2006 ss 110, 111.

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347. Custody rules.

The Secretary of State¹ may make rules² with respect to certain proceedings³. Such rules may in particular make provision with respect to⁴:

- 283 (1) arrangements preliminary to the proceedings⁵;
- 284 (2) the representation of the person to whom the proceedings relate⁶;
- 285 (3) the admissibility of evidence⁷;
- 286 (4) procuring the attendance of witnesses⁸;
- 287 (5) the immunities and privileges of witnesses⁹;
- 288 (6) the administration of oaths¹⁰;
- 289 (7) circumstances in which a review¹¹ may be carried out without a hearing¹²;
- 290 (8) the use for the purposes of the proceedings of live television links or similar arrangements¹³;
- 291 (9) the appointment of persons to discharge administrative functions under the rules¹⁴.

Such rules must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament¹⁵.

1 As to the Secretary of State see para 2 ante.

2 As to the rules made see the Army Custody Rules 2000, SI 2000/2368; the Air Force Custody Rules 2000, SI 2000/2369; the Naval Custody Rules 2000, SI 2000/2367; and notes 4-14 infra.

3 Army Act 1955 s 75M(1) (s 75M added by the Armed Forces Discipline Act 2000 s 8(1)); Air Force Act 1955 s 75M(1) (s 75M added by the Armed Forces Discipline Act 2000 s 8(1)); Naval Discipline Act 1957 s 47N(1) (s 47N added by the Armed Forces Discipline Act 2000 s 8(2)). The text refers to proceedings:

76 (1) on an application under the Army Act 1955 s 75C (as added), the Air Force Act 1955 s 75C (as added) or the Naval Discipline Act 1957 s 47D (as added) (extension of custody without charge: see para 341 ante) (see the Army Act 1955 s 75M(1)(a) (as so added); the Air Force Act 1955 s 75M(1)(a) (as so added); and the Naval Discipline Act 1957 s 47N(1)(a) (as so added));

77 (2) under the Army Act 1955 s 75F(1) (as added), the Air Force Act 1955 s 75F(1) (as added) or the Naval Discipline Act 1957 s 47G(1) (as added) (custody after charge: see para 343 ante) (see the Army Act 1955 s 75M(1)(b) (as so added); the Air Force Act 1955 s 75M(1)(b) (as so added); and the Naval Discipline Act 1957 s 47N(1)(b) (as so added));

78 (3) on a review under the Army Act 1955 s 75G(1) (as added), the Air Force Act 1955 s 75G(1) (as added) or the Naval Discipline Act 1957 s 47H(1) (as added) (review of custody after charge: see para 344 ante) (see the Army Act 1955 s 75M(1)(c) (as so added); the Air Force Act 1955 s 75M(1)(c) (as so added); and the Naval Discipline Act 1957 s 47N(1)(c) (as so added)).

As from a day to be appointed, the Secretary of State may also make rules with respect to proceedings on an application under the Army Act 1955 s 75J(2A) (prospectively added) or Sch 1A para 2(3) (prospectively added), the Air Force Act 1955 s 75J(2A) (prospectively added) or Sch 1A para 2(3) (prospectively added) or the Naval Discipline Act 1957 s 47K(2A) (prospectively added) (see paras 345 ante, 523 post): see the Army Act 1955 s 75M(1)(d) (s 75M(1) as so added; s 75M(1)(d) prospectively added by the Armed Forces Act 2001 Sch 4 para 5(1), (2)); the Air Force Act 1955 s 75M(1)(d) (s 75M(1) as so added; s 75M(1)(d) prospectively added by the Armed Forces Act 2001 Sch 4 para 5(1), (2)); and the Naval Discipline Act 1957 s 47N(1)(d) (s 47N(1) as so added; s 47N(1)(d) prospectively added by the Armed Forces Act 2001 Sch 4 para 11). At the date at which this volume states the law no such day had been appointed.

4 Army Act 1955 s 75M(2) (as added: see note 3 supra); Air Force Act 1955 s 75M(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2) (as added: see note 3 supra).

5 Army Act 1955 s 75M(2)(a) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(a) (as added: see note 3 supra). As to the appointment, for the purposes of custody, of a court administration officer by the Defence Council, and court officials by the court administration officer see the Army Custody Rules 2000, SI 2000/2368, rr 6-7; the Air Force Custody Rules 2000, SI 2000/2369, rr 6-7; and the Naval Custody Rules 2000, SI 2000/2367, rr 6-7. As to the manner in which the court administration officer and the person to whom the proceedings relate are to be notified where it is necessary to bring such a person before a judicial officer see the Army Custody Rules 2000, SI 2000/2368, rr 8-12; the Air Force Custody Rules 2000, SI 2000/2369, rr 8-12; and the Naval Custody Rules 2000, SI 2000/2367, rr 8-12. As to the Defence Council see para 2 ante.

As to the service of documents see the Army Custody Rules 2000, SI 2000/2368, rr 1-5, Sch 1; the Air Force Custody Rules 2000, SI 2000/2369, rr 1-5, Sch 1; and the Naval Custody Rules 2000, SI 2000/2367, rr 1-5, Sch 1.

6 Army Act 1955 s 75M(2)(b) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(b) (as added: see note 3 supra). As to legal representation see the Army Custody Rules 2000, SI 2000/2368, rr 19-20, 25; the Air Force Custody Rules 2000, SI 2000/2369, rr 19-20, 25; and the Naval Custody Rules 2000, SI 2000/2367, rr 19-20, 25.

7 Army Act 1955 s 75M(2)(c) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(c) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(c) (as added: see note 3 supra). Judicial officers are not bound by the strict rules of evidence: see the Army Custody Rules 2000, SI 2000/2368, r 23; the Air Force Custody Rules 2000, SI 2000/2369, r 23; and the Naval Custody Rules 2000, SI 2000/2367, r 23. See also note 13 infra.

8 Army Act 1955 s 75M(2)(d) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(d) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(d) (as added: see note 3 supra). As to the attendance of witnesses see the Army Custody Rules 2000, SI 2000/2368, rr 21, 26, Sch 3; the Air Force Custody Rules 2000, SI 2000/2369, rr 21, 26, Sch 3; and the Naval Custody Rules 2000, SI 2000/2367, rr 21, 26, Sch 3.

9 Army Act 1955 s 75M(2)(e) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(e) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(e) (as added: see note 3 supra). As to immunities and privileges see the Army Custody Rules 2000, SI 2000/2368, r 28; the Air Force Custody Rules 2000, SI 2000/2369, r 28; and the Naval Custody Rules 2000, SI 2000/2367, r 28.

10 Army Act 1955 s 75M(2)(f) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(f) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(f) (as added: see note 3 supra). As to oaths and affirmations see the Army Custody Rules 2000, SI 2000/2368, r 27, Sch 4; the Air Force Custody Rules 2000, SI 2000/2369, r 27, Sch 4; and the Naval Custody Rules 2000, SI 2000/2367, r 27, Sch 4.

11 Is a review under the Army Act 1955 s 75G(1) (as added), the Air Force Act 1955 s 75G(1) (as added) or the Naval Discipline Act 1957 s 47H(1) (as added): see para 344 ante.

12 Army Act 1955 s 75M(2)(g) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(g) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(g) (as added: see note 3 supra). As to the provision made for reviews see the Army Custody Rules 2000, SI 2000/2368, rr 13-17, Sch 2; the Air Force Custody Rules 2000, SI 2000/2369, rr 13-17, Sch 2; and the Naval Custody Rules 2000, SI 2000/2367, rr 13-17, Sch 2.

13 Army Act 1955 s 75M(2)(h) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(h) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(h) (as added: see note 3 supra). The reference in the text to similar arrangements is to arrangements including the use of such a link or other arrangement as a means of satisfying the requirement of the Army Act 1955 s 75C(2)(b) (as added), s 75F(1) (as added), s 75K(7)(b) (as added) or s 75K(8)(b) (as added; prospectively amended), the Air Force Act 1955 s 75C(2)(b) (as added), s 75F(1) (as added), s 75K(7)(b) (as added) or s 75K(8)(b) (as added; prospectively amended) or the Naval Discipline Act 1957 s 47D(2)(b) (as added), s 47G(1) (as added), s 47L(7)(b) (as added) or s 47L(8)(b) (as added; prospectively amended) (see paras 341, 343, 346 ante) for a person to be brought before a judicial officer or judge advocate: see the Army Act 1955 s 75M(2)(h) (as so added); the Air Force Act 1955 s 75M(2)(h) (as so added); and the Naval Discipline Act 1957 s 47N(2)(h) (as so added).

As from a day to be appointed, the Army Act 1955 s 75M(2)(h) (as added) and the Air Force Act 1955 s 75M(2)(h) (as added) are amended to provide that rules may make provision with respect to the use for the purposes of the proceedings of live television links or similar arrangements, including the use of such a link or other arrangement as a means of satisfying the requirement of the Army Act 1955 s 75C(2)(b) (as added), s 75F(1) (as added), s 75K(7)(b) (as added) or s 75K(8)(b) (as added; prospectively amended) or Sch 1A para 3(4)(b) (prospectively added), or the Air Force Act 1955 s 75C(2)(b) (as added), s 75F(1) (as added), s 75K(7)(b) (as added) or s 75K(8)(b) (as added; prospectively amended) or Sch 1A para 3(4)(b) (prospectively added) for a person to be brought before a judicial officer, judge advocate or magistrate: see the Army Act 1955 s 75M(2)(h)

(s 75M(2) as so added; s 75M(2)(h) prospectively amended by the Armed Forces Act 2001 Sch 4 para 5(1), (3)); and the Air Force Act 1955 s 75M(2)(h) (s 75M(2) as so added; s 75M(2)(h) prospectively amended by the Armed Forces Act 2001 Sch 4 para 5(1), (3)). At the date at which this volume states the law no such day had been appointed. As to judicial officers see para 341 note 3 ante; and as to judge advocates see para 484 post.

As to the arrangements made for hearings see the Army Custody Rules 2000, SI 2000/2368, r 18; the Air Force Custody Rules 2000, SI 2000/2369, r 18; and the Naval Custody Rules 2000, SI 2000/2367, r 18. As to the use at hearings of live television links see the Army Custody Rules 2000, SI 2000/2368, rr 22, 24; the Air Force Custody Rules 2000, SI 2000/2369, rr 22, 24; and the Naval Custody Rules 2000, SI 2000/2367, rr 22, 24.

14 Army Act 1955 s 75M(2)(i) (as added: see note 3 supra); Air Force Act 1955 s 75M(2)(i) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(2)(i) (as added: see note 3 supra). The judicial officer must announce and record his decision at the end of any hearing: see the Army Custody Rules 2000, SI 2000/2368, r 29, Sch 2; the Air Force Custody Rules 2000, SI 2000/2369, r 29, Sch 2; and the Naval Custody Rules 2000, SI 2000/2367, r 29, Sch 2.

15 Army Act 1955 s 75M(3) (as added: see note 3 supra); Air Force Act 1955 s 75M(3) (as added: see note 3 supra); Naval Discipline Act 1957 s 47N(3) (as added: see note 3 supra).

UPDATE

347 Custody rules

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the power to make custody rules, see now the Armed Forces Act 2006 s 112; and as to such rules, see the Armed Forces (Custody Proceedings) Rule 2009, SI 2009/1098.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/A. PROCEDURE/(A) Summary Procedure under the Naval Discipline Act 1957/348. Investigation of charges by commanding officer.

(vii) Summary Proceedings

A. PROCEDURE

(A) SUMMARY PROCEDURE UNDER THE

348. Investigation of charges by commanding officer.

An allegation that a person subject to naval discipline ('the accused')¹ has committed an offence against any provision of the Naval Discipline Act 1957 must be reported, in the form of a charge, to his commanding officer², who must investigate such a charge³. If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him⁴. If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under the Naval Discipline Act 1957, he may stay further proceedings with respect to the charge⁵.

After investigating a charge, the commanding officer may⁶: (1) dismiss the charge⁷; (2) refer the charge to higher authority⁸; or (3) try the accused summarily⁹.

The commanding officer may not try summarily:

- 292 (a) any charge which is not capable of being tried summarily¹⁰;
- 293 (b) any charge against an officer unless¹¹: (i) the commanding officer is of or above the rank of commander¹²; (ii) the rank of the commanding officer is at least two ranks higher than that of the accused¹³; and (iii) the accused is below the rank of captain¹⁴.

For these purposes, a charge is capable of being tried summarily if it is for an offence triable by court-martial¹⁵ under the Naval Discipline Act 1957, other than¹⁶ an offence which, before the passing of the Human Rights Act 1998, was punishable by sentence of death¹⁷, or an offence under the provisions relating to civil offences¹⁸ where the civil offence is one for which the sentence is fixed by law as life imprisonment¹⁹. Any liability to suffer death under the Naval Discipline Act 1957 is replaced by a liability to imprisonment for life or any less punishment authorised by the Act²⁰.

1 As to the persons subject to naval discipline see para 306 ante.

2 Naval Discipline Act 1957 s 52B(1) (ss 52B, 52E, 52F added by the Armed Forces Act 1996 s 5, Sch 1 paras 11, 13). The procedure for reporting a charge to a commanding officer may be specified by regulations made by the Defence Council: see the Naval Discipline Act 1957 s 52F(1), (2)(a) (as so added). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

For the purposes of the Naval Discipline Act 1957, 'commanding officer', in relation to a person charged with, or in custody in connection with, an offence, means the officer in command of the ship or naval establishment to which he belongs at the time of the commission of the offence, while he is in custody in connection with it, or at

the time of its investigation or summary trial: s 52E(1) (as so added; and amended by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 8(1), (2)). The Defence Council may by regulations make provision:

- 79 (1) enabling the powers conferred by the Naval Discipline Act 1957 on the commanding officer of a person charged with, or in custody in connection with, an offence to be exercised by other persons of such descriptions as may be specified (s 52E(2)(a) (as so added; and amended by the Armed Forces Discipline Act 2000 Sch 1 para 8(1), (3)));
- 80 (2) with respect to the delegation by the commanding officer, or other person exercising the powers of a commanding officer by virtue of regulations under head (1) supra, of any of his powers to any officer not below the rank of lieutenant or corresponding rank (Naval Discipline Act 1957 s 52E(2)(b) (as so added)).

An officer to whom any powers are delegated by virtue of head (2) supra does not have power to award any punishment other than a fine, stoppages (which does not include stoppages for personal injury) or those described in s 43(1)(m) (as substituted and amended) (see para 424 post): s 52E(3), (4) (as so added). Head (2) supra is without prejudice to s 47F(1)(a) (as added) (see para 342 ante): s 52E(3A) (added by the Armed Forces Discipline Act 2000 Sch 1 para 8(1), (4)). Such regulations do not constitute statutory instruments and are not recorded in this work. As to corresponding ranks see para 1 note 7 ante.

3 Ibid s 52B(2) (as added: see note 2 supra). The procedure to be followed by a commanding officer investigating a charge so reported to him may be specified by regulations made by the Defence Council: see s 52F(1), (2)(b) (as added: see note 2 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

4 Ibid s 52B(3) (as added: see note 2 supra). The procedure for amending or substituting charges may be specified by regulations made by the Defence Council: see s 52F(1), (2)(c) (as added: see note 2 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

5 Ibid s 52B(4) (as added: see note 2 supra).

6 Ibid s 52B(5) (as added: see note 2 supra). This provision is subject to s 52B(6) (as added and substituted) and s 52B(6A) (as added) (see the text to notes 10-14 infra): s 52B(5) (as so added; and amended by the Armed Forces Act 2001 s 17, Sch 1 para 9(1), (2)).

7 Naval Discipline Act 1957 s 52B(5)(a) (as added: see note 2 supra).

8 Ibid s 52B(5)(b) (as added: see note 2 supra). As to the powers of the higher authority see para 349 post.

9 Ibid s 52B(5)(c) (as added: see note 2 supra). The procedure on summary trial may be specified by regulations made by the Defence Council: see s 52F(1), (2)(d) (as added: see note 2 supra). Such regulations do not constitute statutory instruments and are not recorded in this work. As to summary trial see para 350 post.

10 Ibid s 52B(6) (s 52B as added (see note 2 supra); s 52B(6) substituted, and s 52B(6A), (6B) added, by the Armed Forces Act 2001 Sch 1 para 9(1), (3)).

11 Naval Discipline Act 1957 s 52B(6A) (as added: see note 10 supra). For the meaning of 'officer' see para 152 ante.

12 Ibid s 52B(6A)(a) (as added: see note 10 supra). For the purposes of s 52B(6A) (as added), the holding by any person of any acting rank other than that of commodore is to be disregarded: s 52B(6B) (as added: see note 10 supra). 'Acting rank' means rank of any description (however called) such that under the Queen's Regulations a commanding officer has power to order the holder to revert from that rank: Naval Discipline Act 1957 s 52B(6B) (as so added).

13 Ibid s 52B(6A)(b) (as added: see note 10 supra). See note 12 supra.

14 Ibid s 52B(6A)(c) (as added: see note 10 supra). See note 12 supra.

15 As to naval courts-martial see para 448 et seq post.

16 Naval Discipline Act 1957 s 52B(7) (s 52B as added (see note 2 supra); s 52B(7) substituted, and s 52B(8) added, by the Armed Forces Act 2001 s 34, Sch 6 para 22).

17 Naval Discipline Act 1957 s 52B(7)(a) (s 52B as added (see note 2 supra); s 52B(7) as substituted (see note 16 supra)). The offences are:

- 81 (1) an offence under s 2 (as substituted and amended) (see paras 392-393 post), if it consists in an act or omission falling within s 2(1) (as substituted) or s 2(2)(a) (as substituted) and it is

charged that it was committed with intent to assist the enemy (s 52B(8)(a) (as added: see note 16 supra));

- 82 (2) an offence under s 3 (as substituted and amended) (see para 393 post), if it consists in an act or omission falling within s 3(1)(a) (as substituted), s 3(1)(b) (as substituted), s 3(1)(c) (as substituted), s 3(1)(d) (as substituted) or s 3(1)(f) (as substituted) and it is charged that it was committed with intent to assist the enemy (s 52B(8)(b) (as so added));
- 83 (3) an offence under s 4 (as substituted and amended) (see para 394 post), if it is charged that it was committed with intent to assist the enemy (s 52B(8)(c) (as so added));
- 84 (4) an offence under s 9 (as amended) (see para 399 post), if it is charged that the mutiny had as its object or one of its objects the refusal or avoidance of any duty or service against or in connection with operations against the enemy, or the impeding of the performance of any such duty or service (s 52B(8)(d) (as so added));
- 85 (5) an offence under s 10 (as amended) (see para 399 post), if it is charged that it was committed with intent to assist the enemy (s 52B(8)(e) (as so added));
- 86 (6) an offence under s 42 (as amended; prospectively further amended) (see para 422 post), where the civil offence is treason (s 52B(8)(f) (as so added)).

18 le under ibid s 42 (as amended; prospectively further amended): see para 422 post.

19 Ibid s 52B(7)(b) (as substituted: see note 16 supra).

20 Human Rights Act 1998 s 21(5).

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may

award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

348 Investigation of charges by commanding officer

NOTE 20--Human Rights Act 1998 s 21(5) repealed: Armed Forces Act 2006 Sch 17.

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349. Powers of higher authority.

Where a charge is referred to higher authority, the higher authority must refer the case to the prosecuting authority¹ unless he takes one of the following steps in relation to the charge². The higher authority may refer the charge back to the commanding officer³ of the accused⁴ with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer must deal with the charge accordingly⁵.

If the charge is against a rating⁶ and is capable of being tried summarily⁷, the higher authority may⁸ refer it back to the commanding officer of the accused to be so tried⁹.

If the charge is against an officer¹⁰ below the rank of captain and is capable of being tried summarily, the higher authority may¹¹:

294 (1) in a case where the commanding officer is of or above the rank of commander¹² and the rank of the commanding officer is at least two ranks higher than that of the accused¹³, refer the charge back to the commanding officer to be so tried¹⁴; and

295 (2) in any other case, refer the charge to the appropriate superior authority to be so tried¹⁵.

If, however, the charge has been referred to the higher authority as a result of an election for court-martial trial¹⁶, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused to be tried summarily¹⁷.

1 As to the prosecuting authority see para 316 ante.

2 Naval Discipline Act 1957 s 52C(1) (ss 52C, 52F added by the Armed Forces Act 1996 s 5, Sch 1 paras 11, 13). The persons who may act as the higher authority may be specified by regulations made by the Defence Council: see s 52F(1), (2)(k) (s 52F as so added; and s 52F(2)(k) substituted by the Armed Forces Act 2001 s 17, Sch 1 para 13(b)). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

3 For the meaning of 'commanding officer' see para 348 note 2 ante.

4 As to the accused see para 348 ante.

5 Naval Discipline Act 1957 s 52C(2) (as added: see note 2 supra).

6 For the meaning of 'rating' see para 156 note 1 ante.

7 For the charges capable of being tried summarily see the Naval Discipline Act 1957 s 52B(7) (as added and substituted); and para 348 ante.

8 Ie subject to *ibid* s 52C(4) (as added): see the text to note 17 infra.

9 *Ibid* s 52C(3) (as added: see note 2 supra).

10 For the meaning of 'officer' see para 152 ante.

11 Naval Discipline Act 1957 s 52C(3A) (s 52C as added (see note 2 supra); and s 52C(3A) added by the Armed Forces Act 2001 Sch 1 para 10). See note 8 supra.

12 See the Naval Discipline Act 1957 s 52B(6A)(a) (as added); and para 348 ante.

13 See *ibid* s 52B(6A)(b) (as added); and para 348 ante.

14 See *ibid* s 52C(3A)(a) (as added: see note 11 *supra*).

15 *Ibid* s 52C(3A)(b) (as added: see note 11 *supra*).

16 The information to be provided to a person afforded an opportunity of electing court-martial trial, the procedure for electing court-martial trial and the period within which any such election may be made, may be specified by regulations made by the Defence Council: see *ibid* s 52F(1), (2)(h), (i) (s 52F as added: see note 2 *supra*). Such regulations do not constitute statutory instruments and are not recorded in this work. As to election for court-martial trial see para 350 post.

17 *Ibid* s 52C(4) (as added: see note 2 *supra*). The procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election may be specified by regulations made by the Defence Council: see s 52F(1), (2)(j) (as added: see note 2 *supra*). Such regulations do not constitute statutory instruments and are not recorded in this work.

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of

the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

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350. Summary trial.

Where a charge is to be tried summarily¹, if the charge is against a rating² and the commanding officer³ considers that, if the charge were proved, he would award a punishment⁴:

- 296 (1) in the case of a warrant officer, of disrating⁵, a fine⁶ or stoppages⁷;
- 297 (2) in the case of any other rating, of dismissal from Her Majesty's service, detention⁸ or disrating⁹,

he must afford the accused¹⁰ an opportunity of electing court-martial trial¹¹. If the charge is against an officer¹², the appropriate superior authority¹³ must afford the accused the opportunity of electing court-martial trial¹⁴. Where, in accordance with regulations as to summary trial¹⁵, two or more charges are together to be tried summarily, any election for court-martial trial must relate to all the charges concerned¹⁶. If the accused elects court-martial trial and does not withdraw his election with leave, the commanding officer or appropriate superior authority must refer the charge to higher authority with a view to the trial of the accused by court-martial¹⁷. If a charge has been referred to higher authority as a result of an election for court-martial trial, and that election is withdrawn with leave, the higher authority must¹⁸: (a) if the accused is a rating, refer the charge back to the commanding officer of the accused¹⁹; (b) if the accused is an officer, refer the charge back to the appropriate superior authority²⁰, for the commanding officer or appropriate superior authority to try the charge summarily²¹.

If, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him²². If, in the course of trying the charge, the commanding officer or appropriate superior authority considers that it should not be tried summarily, he may refer the charge to higher authority²³. If the commanding officer or appropriate superior authority determines that the charge has not been proved, he must acquit the accused²⁴. If the commanding officer or appropriate superior authority determines that the charge has been proved, he must record a finding of guilt and award punishment accordingly²⁵. A commanding officer or appropriate superior authority does not have power on a summary trial to award a sentence of dismissal with disgrace from Her Majesty's service, a sentence of imprisonment or a sentence of detention for any term exceeding three months²⁶.

Where a person subject to naval discipline is acquitted or convicted of an offence on summary trial²⁷, a civil court²⁸ is debarred from trying him subsequently for the same, or substantially the same, offence²⁹. Where a person subject to naval discipline is acquitted or convicted of an offence on trial by a civil court wherever situated or has had an offence committed by him taken into consideration when being sentenced by a civil court in the United Kingdom, he may not subsequently be tried under the Naval Discipline Act 1957 for the same, or substantially the same, offence³⁰.

1 For the charges capable of being tried summarily see the Naval Discipline Act 1957 s 52B(7) (as substituted); and para 348 ante.

2 For the meaning of 'rating' see para 156 note 1 ante.

3 For the meaning of 'commanding officer' see para 348 note 2 ante.

4 Naval Discipline Act 1957 s 52D(1), (2) (ss 52D, 52F added by the Armed Forces Act 1996 s 5, Sch 1 paras 11, 13; and the Naval Discipline Act 1957 s 52D(2) amended by the Armed Forces Act 2001 s 17, Sch 1 para 11(1), (2)). The punishments which may be awarded on a summary trial by a commanding officer or appropriate superior authority under the Naval Discipline Act 1957 s 52D (as added and amended) may be limited in specified cases by regulations made by the Defence Council: see s 52F(1), (2)(e) (as so added). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

5 As to disrating see para 428 post.

6 As to the maximum fine that may be awarded when an offence is tried summarily see para 429 post.

7 Naval Discipline Act 1957 s 52D(2)(a) (as added: see note 4 supra). As to the meaning of 'stoppages' see para 424 note 17 post.

8 As to service, commencement, duration, suspension and reconsideration of sentences of detention see para 476 et seq post.

9 Naval Discipline Act 1957 s 52D(2)(b) (as added: see note 4 supra). In relation to civilians liable to be tried by virtue of s 118 (as amended; prospectively further amended) (see para 311 ante), s 52D (as added and amended) applies as it applies in relation to a rating, but subject to the following modifications: (1) the officer empowered to try and punish an offence in accordance with s 52D (as added and amended) must be such officer as may be determined by or under regulations made by the Defence Council for the purposes of Sch 4 para 4 (as amended); (2) the punishment which may be awarded under s 52D (as added and amended) in the case of any offence is a fine not exceeding £100, and no other punishment may be so awarded: see s 118(3), Sch 4 para 4 (amended by the Armed Forces Act 1981 s 10, Sch 1 para 1; the Armed Forces Act 1996 ss 5, 35(2), Sch 1 para 97, Sch 7 Pt I; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

10 As to the accused see para 348 ante.

11 Naval Discipline Act 1957 s 52D(2) (as added: see note 4 supra).

12 For the meaning of 'officer' see para 152 ante.

13 A person may act as 'appropriate superior authority' in relation to a person charged with an offence if he is of or above the rank of commander, and his rank is at least two ranks higher than that of the accused: Naval Discipline Act 1957 s 52EE(1) (s 52EE added by the Armed Forces Act 2001 Sch 1 para 12). For the purposes of the Naval Discipline Act 1957 s 52EE(1) (as added), the holding by any person of any acting rank other than that of commodore is to be disregarded, and for this purpose 'acting rank' means rank of any description (however called) such that under the Queen's Regulations a commanding officer has power to order the holder to revert from that rank: s 52EE(3) (as so added). The appropriate superior authority in relation to a person charged with an offence is appointed by the higher authority: s 52EE(2) (as so added).

The provisions of s 52D (as added and amended) and s 52C (as added and amended) (see para 349 ante) do not prevent an officer from acting as both higher authority and appropriate superior authority in relation to charge: s 52D(9) (added by the Armed Forces Act 2001 Sch 1 para 11(1), (8)). As to the higher authority see para 349 ante.

14 Naval Discipline Act 1957 s 52D(2ZA) (added by the Armed Forces Act 2001 Sch 1 para 11(1), (3)).

15 le under the Naval Discipline Act 1957 s 52F (as added and amended): see note 4 supra; and paras 348-349 ante.

16 Ibid s 52D(2A) (added by the Armed Forces Discipline Act 2000 s 11(4)).

17 Naval Discipline Act 1955 s 52D(3) (as added (see note 4 supra); and amended by the Armed Forces Discipline Act 2000 s 11(5); and the Armed Forces Act 2001 Sch 1 para 11(1), (4)).

18 Naval Discipline Act 1955 s 52D(4) (s 52D as added (see note 4 supra); and s 52D(4) substituted by the Armed Forces Act 2001 Sch 1 para 11(1), (5)).

19 Naval Discipline Act 1955 s 52D(4)(a) (s 52D as added (see note 4 supra); and s 52D(4) as substituted (see note 16 supra)).

20 Ibid s 52D(4)(b) (s 52D as added (see note 4 supra); and s 52D(4) as substituted (see note 16 supra)).

21 Ibid s 52D(4) (s 52D as added (see note 4 supra); and s 52D(4) as substituted (see note 16 supra)). The provisions of s 52D(2) (as added and amended) (see the text to notes 1-9 supra) and s 52D(2ZA) (as added) (see the text to notes 8-12 supra) do not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the commanding officer or appropriate superior authority under s 52D(4) (as so added and substituted): s 52D(4A) (s 52D as added (see note 4 supra); s 52D(4A)-(4C) added by the Armed Forces Act 2001 Sch 1 para 11(1), (6)).

22 Naval Discipline Act 1957 s 52D(4B) (as added: see note 19 supra). Where a charge is amended or one charge is substituted for another, s 52D(2) (as added and amended) (see the text to notes 1-9 supra) or s 52D(2ZA) (as added) (see the text to notes 8-12 supra) apply in relation to the amended or substituted charge: s 52D(4C) (as added: see note 19 supra).

23 Ibid s 52D(5) (s 52D as added (see note 4 supra); and s 52D(5)-(8) amended by the Armed Forces Act 2001 Sch 1 para 11(1), (7)).

24 Naval Discipline Act 1957 s 52D(6) (s 52D as added (see note 4 supra); and s 52D(6) as amended (see note 21 supra)).

25 Ibid s 52D(7) (s 52D as added (see note 4 supra); and s 52D(7) as amended (see note 21 supra)).

26 Ibid s 52D(8) (s 52D as added (see note 4 supra); and s 52D(8) as amended (see note 21 supra)).

27 Ie under ibid s 52D (as added and amended): see the text and notes 1-24 supra.

28 For the meaning of 'civil court' see para 57 note 2 ante.

29 See the Naval Discipline Act 1957 s 129(1) (as amended); and paras 58-59 ante.

30 See ibid s 129(2) (as amended); and para 57 ante.

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI

2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

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351. Sentence of detention awarded on summary trial.

A sentence of detention awarded on summary trial begins to run from the day on which it is awarded, if the offender so elects at the time of the award¹. If the offender does not make an election or, having made such an election, withdraws it during the appeal period², his sentence or, in the case of withdrawal, the remainder of his sentence must be suspended until the end of the appeal period, or where an appeal is brought within the appeal period, until the determination of the appeal³. Where an appeal is brought within the appeal period, by an offender who has made an election which has not been withdrawn, or after the end of the appeal period, by any offender, the remainder of his sentence must be suspended until the determination of the appeal⁴.

1 See the Naval Discipline Act 1957 s 85A(1), (2) (s 85A added by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 11). This is subject to the provisions of ss 86-92 (as amended): see paras 476-477 post. A sentence is taken to be awarded on the day on which the warrant specifying the sentence, as approved in accordance with regulations made by the Defence Council, is read to the offender or, if the offender has been detained in custody since the signature of that warrant by the officer by whom he was tried, on the first day on which he was so detained: Naval Discipline Act 1957 s 85A(3) (as so added). As to the Defence Council see para 2 ante.

2 The appeal period' means the period within which an appeal may be brought under *ibid* s 52FK(2) (as added) (see para 360 post): s 85A(6) (as added: see note 1 supra).

3 *Ibid* s 85A(4) (as added: see note 1 supra).

4 *Ibid* s 85A(5) (as added: see note 1 supra).

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's

disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

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352. Review of summary findings.

Where on a summary trial¹ the accused² has been found guilty of any offence, the finding or any punishment awarded, or both, may be reviewed at any time³. Such a review must be carried out in accordance with the provisions of the Queen's Regulations⁴ by the Defence Council⁵, any naval officer⁶ superior in command to the officer who tried the charge summarily, or a flag officer appointed by the Defence Council to carry out the review or any class of review which includes the review⁷.

Where the period of 14 days within which an appeal must be brought to the summary appeal court⁸ has expired, and no appeal has been brought⁹, the authority carrying out a review of the summary finding and award¹⁰ may, with the leave of the summary appeal court¹¹, refer the finding or any punishment awarded, or both, to that court to be considered by it as on an appeal¹². Where an appeal has been brought to the summary appeal court¹³ and it appears to the authority carrying out a review, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded, or both, including any finding or punishment substituted or awarded by the summary appeal court, to that court to be considered or reconsidered by that court as on an appeal¹⁴.

In a case where exceptionally the authority carrying out a review of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment awarded relates only to that finding, quash the punishment awarded in consequence of that finding¹⁵.

1 As to naval summary trial see para 350 ante.

2 As to the accused see para 348 ante.

3 Naval Discipline Act 1957 s 71B(1), (3) (s 71B added by the Armed Forces Act 1996 s 16, Sch 5 para 12; and the Naval Discipline Act 1957 s 71B(3) amended by the Armed Forces Discipline Act 2000 ss 25, 27, Sch 3 para 20(1), (3), Sch 4). See further paras 473-474 post.

4 Naval Discipline Act 1957 s 71B(4) (as added: see note 3 supra).

5 As to the Defence Council see para 2 ante.

6 For the meaning of 'officer' see para 152 ante.

7 Naval Discipline Act 1957 s 71B(5) (as added: see note 3 supra).

8 Ie the period referred to in *ibid* s 52FK(2) (as added): see para 360 post. As to the summary appeal court see para 359 et seq post.

9 Ie under *ibid* s 52FK (as added): see para 360 post.

10 Ie under *ibid* s 71B (as added and amended).

11 A reference to the summary appeal court under *ibid* s 71B(5A) (as added) or s 71B(5B) (as added) is treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment: s 71B(5C) (s 71B as added (see note 3 supra); s 71B(5A)-(5E) added by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 20(1), (4)).

12 Naval Discipline Act 1957 s 71B(5A) (as added: see note 11 supra).

13 le under ibid s 52FK (as added): see para 360 post.

14 Ibid s 71B(5B) (as added: see note 11 supra).

15 Ibid s 71B(5D) (as added: see note 11 supra). The powers conferred by s 71B(5D) (as added) are exercisable whether or not the conditions in s 71B(5A) (as added) (see the text and notes 8-12 supra) are satisfied: s 71B(5E) (as added: see note 11 supra).

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a

commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

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(B) SUMMARY PROCEDURE UNDER THE

353. Investigation of charges by commanding officer.

An allegation that a person subject to military or air force law ('the accused')¹ has committed an offence against any provision of Part II of the Army Act 1955² or Part II of the Air Force Act 1955³, as the case may be, must be reported, in the form of a charge, to his commanding officer⁴, who must investigate such a charge⁵. If, in the course of investigating a charge, the commanding officer considers it appropriate to do so, he may amend the charge or substitute another charge for it and treat the amended or substituted charge as if that charge had been reported to him⁶. If, in the course of investigating a charge, it appears to the commanding officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of the better administration of justice should be, taken against the accused otherwise than under the Army Act 1955 or the Air Force Act 1955, he may stay further proceedings with respect to the charge⁷.

After investigating a charge the commanding officer may⁸: (1) dismiss the charge⁹; (2) refer the charge to higher authority¹⁰; or (3) deal summarily with the charge¹¹. The commanding officer may not deal summarily with a charge if¹² the accused is an officer or warrant officer¹³, or the charge is not capable of being dealt with summarily¹⁴.

1 As to the persons subject to military or air force law see para 307 et seq ante.

The provisions of the Army Act 1955 and the Air Force Act 1955 relating to the investigation of, and summary dealing with, offences apply, subject to modifications, to civilians who are within the scope of the Army Act 1955 s 209 (as amended; prospectively further amended) or the Air Force Act 1955 s 209 (as amended; prospectively further amended) (see para 311 ante) as they apply in relation to officers and warrant officers: see the Army Act 1955 s 209(3)(e); and the Air Force Act 1955 s 209(3)(e). Provision is made by the Army Act 1955 and the Air Force Act 1955 for the making of procedural modifications in civilian court cases: see the Army Act 1955 s 209(3B)(aa), (c) (s 209(3B) added as s 209(3A) by the Armed Forces Act 1976 s 22(5), Sch 9 para 6; the Army Act 1955 s 209(3A) renumbered as s 209(3B) by the Armed Forces Act 1986 s 8(1), (3); and the Army Act 1955 s 209(3B)(aa) added, and s 209(3B)(c) amended, by the Armed Forces Act 1996 s 5, Sch 1 para 72); and the Air Force Act 1955 s 209(3B)(aa), (c) (s 209(3B) added as s 209(3A) by the Armed Forces Act 1976 Sch 9 para 6; the Air Force Act 1955 s 209(3A) renumbered as s 209(3B) by the Armed Forces Act 1986 s 8(1), (3); and the Air Force Act 1955 s 209(3B)(aa) added, and s 209(3B)(c) amended, by the Armed Forces Act 1996 Sch 1 para 82). For further modifications applicable to cases where the accused may be tried by a standing civilian court see para 522 post. As to standing civilian courts see para 520 et seq post.

2 Ie the Army Act 1955 Pt II (ss 24-143) (as amended).

3 Ie the Air Force Act 1955 Pt II (ss 24-143) (as amended).

4 Army Act 1955 s 76(1) (s 76 substituted by the Armed Forces Act 1996 s 5, Sch 1 paras 1, 2); Air Force Act 1955 s 76(1) (s 76 substituted by the Armed Forces Act 1996 Sch 1 paras 6, 7). The procedure for reporting a charge to a commanding officer may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(a) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 1, 5); and the Air Force Act 1955 s 83(1), (2)(a) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 6, 10). Regulations made by the Defence Council do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

For the purposes of the Army Act 1955 and the Air Force Act 1955, 'commanding officer', in relation to a person charged with, or in custody in connection with, an offence, means such officer having powers of command over the accused as may be determined by or under regulations of the Defence Council: Army Act 1955 s 82(1); Air Force Act 1955 s 82(1) (both amended by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 2; and the

Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Provision may be made with respect to the delegation by the commanding officer of any of his functions by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(c) (as so substituted); and the Air Force Act 1955 s 83(1), (2)(c) (as so substituted). Such regulations do not constitute statutory instruments and are not recorded in this work.

5 Army Act 1955 s 76(2) (s 76 as substituted: see note 4 supra); Air Force Act 1955 s 76(2) (s 76 as substituted: see note 4 supra). The procedure to be followed by a commanding officer investigating a charge so reported to him may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(b) (as substituted: see note 4 supra); and the Air Force Act 1955 s 83(1), (2)(b) (as substituted: see note 4 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

The Army Act 1955 s 76 (as substituted) and the Air Force Act 1955 s 76 (as substituted) have effect subject to any power of the commanding officer under the Army Act 1955 s 103A(1) (as added) or the Air Force Act 1955 s 103A(1) (as added) (see para 482 post) to direct that the charge be tried by a field general court-martial: Army Act 1955 s 76(7) (as so substituted); Air Force Act 1955 s 76(7) (as so substituted). As to field general courts-martial see para 480 et seq post.

6 Army Act 1955 s 76(3) (as substituted: see note 4 supra); Air Force Act 1955 s 76(3) (as substituted: see note 4 supra). The procedure for amending or substituting charges may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(e) (as substituted: see note 4 supra); and the Air Force Act 1955 s 83(1), (2)(e) (as substituted: see note 4 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

7 Army Act 1955 s 76(4) (as substituted: see note 4 supra); Air Force Act 1955 s 76(4) (as substituted: see note 4 supra). This may involve considering whether a civilian subject to service law should be dealt with in the civil courts (see *R v Martin (Alan)* [1998] AC 917, [1998] 1 All ER 193, HL), or if an individual is on attachment from another service whether it would be better for disciplinary action to be taken by his own service rather than the one to which he is attached, or if a serviceman or civilian, particularly if a juvenile, should be dealt with in the civil courts.

8 Army Act 1955 s 76(5) (as substituted: see note 4 supra); Air Force Act 1955 s 76(5) (as substituted: see note 4 supra). This provision is subject to the Army Act 1955 s 76(6) (as substituted) and the Air Force Act 1955 s 76(6) (as substituted): see the text to notes 12-14 infra.

9 Army Act 1955 s 76(5)(a) (as substituted: see note 4 supra); Air Force Act 1955 s 76(5)(a) (as substituted: see note 4 supra). The commanding officer may dismiss any charge which can be dealt with under military or air force law even (if outside the United Kingdom) treason or murder, even if the person is an officer, warrant officer or civilian with whom he cannot deal summarily. The commanding officer generally only takes this course where there is insufficient evidence for the matter to proceed.

Where a person subject to military or air force law has had a charge dismissed by his commanding officer he is not liable in respect of the same, or substantially the same, offence to be tried by court-martial or to have the case dealt with summarily: see the Army Act 1955 s 134(1)(b) (as amended); the Air Force Act 1955 s 134(1)(b) (as amended); and para 486 post. However, a civil court may deal with an accused if the case against an individual has been dismissed under the Army Act 1955 s 76(5)(a) (as substituted) or the Air Force Act 1955 s 76(5)(a) (as substituted) as opposed to after the case has been found proved or not proved under the Army Act 1955 s 76(5)(c) (as substituted) or the Air Force Act 1955 s 76(5)(c) (as substituted) (see the text to note 11 infra) on summary dealing.

10 Army Act 1955 s 76(5)(b) (as substituted: see note 4 supra); Air Force Act 1955 s 76(5)(b) (as substituted: see note 4 supra). As to powers of the higher authority see para 354 post.

11 Army Act 1955 s 76(5)(c) (as substituted: see note 4 supra); Air Force Act 1955 s 76(5)(c) (as substituted: see note 4 supra). The procedure on summary dealings may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(f) (as substituted: see note 4 supra); and the Air Force Act 1955 s 83(1), (2)(f) (as substituted: see note 4 supra). Such regulations do not constitute statutory instruments and are not recorded in this work. As to references to dealing summarily with a charge see para 356 note 1 post.

12 Army Act 1955 s 76(6) (as substituted: see note 4 supra); Air Force Act 1955 s 76(6) (as substituted: see note 4 supra).

13 Army Act 1955 s 76(6)(a) (as substituted: see note 4 supra); Air Force Act 1955 s 76(6)(a) (as substituted: see note 4 supra). As to references to warrant officers see para 336 note 6 ante.

14 Army Act 1955 s 76(6)(b) (as substituted: see note 4 supra); Air Force Act 1955 s 76(6)(b) (as substituted: see note 4 supra). The charges which are capable of being dealt with summarily may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(d) (as substituted: see note 4 supra); and the Air Force Act 1955 s 83(1), (2)(d) (as substituted: see note 4 supra). Such regulations do not constitute statutory instruments and are not recorded in this work. See also the Queen's Regulations for the

Army 1975 paras 6.047-6.083; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 paras 1053 et seq, 1057-1058.

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed

that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/A. PROCEDURE/(B) Summary Procedure under the Army Act 1955 and the Air Force Act 1955/354. Powers of higher authority.

354. Powers of higher authority.

Where a charge is referred to higher authority, the higher authority must refer the case to the prosecuting authority¹ unless he takes one of the following steps in relation to the charge². The higher authority may refer the charge back to the commanding officer³ of the accused⁴ with a direction to dismiss it or to stay all further proceedings in relation to it, and the commanding officer must deal with the charge accordingly⁵. If the charge is against a non-commissioned officer⁶ or soldier and is capable of being dealt with summarily, the higher authority may refer it back to the commanding officer of the accused to be so dealt with⁷. If the charge is against an officer below the rank of colonel or group captain, as the case may be, or a warrant officer, and is capable of being dealt with summarily, the higher authority may refer it to the appropriate superior authority⁸ to be so dealt with⁹. If the charge has been referred to the higher authority as a result of an election for court-martial trial¹⁰, and that election has not been withdrawn with leave, he may not refer the charge back to the commanding officer of the accused, or, as the case may be, to the appropriate superior authority, to be dealt with summarily¹¹.

1 As to the prosecuting authority see para 315 ante. The same officer giving legal advice on whether to refer the case to a higher authority and subsequently acting for the prosecuting authority does not offend the principles of natural justice: *R v General Courts-Martial at RAF Uxbridge, ex p Wright* (1999) 11 Admin LR 747, (1999) Times, 1 July.

2 Army Act 1955 s 76A(1) (s 76A added by the Armed Forces Act 1996 s 5, Sch 1 paras 1, 2); Air Force Act 1955 s 76A(1) (s 76A added by the Armed Forces Act 1996 Sch 1 paras 6, 7). The persons who may act as the higher authority may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(k), (l) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 1, 5); and the Air Force Act 1955 s 83(1), (2)(k), (l) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 6, 10). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

The Army Act 1955 s 76A (as added and amended) and the Air Force Act 1955 s 76A (as added and amended) have effect subject to any power of the higher authority under the Army Act 1955 s 103A(1) (as added) or the Air Force Act 1955 s 103A(1) (as added) (see para 482 post) to direct that the charge be tried by a field general court-martial: Army Act 1955 s 76A(6) (as so added); Air Force Act 1955 s 76A(6) (as so added). As to field general courts-martial see para 480 et seq post.

3 For the meaning of 'commanding officer' see para 353 note 4 ante.

4 As to the accused see para 353 ante.

5 Army Act 1955 s 76A(2) (as added: see note 2 supra); Air Force Act 1955 s 76A(2) (as added: see note 2 supra).

6 As to references to non-commissioned officers see para 336 note 7 ante.

7 Army Act 1955 s 76A(3) (as added: see note 2 supra); Air Force Act 1955 s 76A(3) (as added: see note 2 supra). As to the charges which are capable of being dealt with summarily see para 353 note 14 ante. As to references to dealing summarily with a charge see para 356 note 1 post.

8 A person may act as appropriate superior authority in relation to a person charged with an offence if: (1) he is a general officer, flag officer, air officer, brigadier or commodore; or (2) where the Defence Council so directs, he is a colonel or a group captain or a naval officer of corresponding rank: Army Act 1955 s 82(2) (substituted by the Armed Forces Act 1996 Sch 1 paras 1, 4(2); and amended by the Armed Forces Act 2001 s 17, Sch 1 para 2); Air Force Act 1955 s 82(2) (substituted by the Armed Forces Act 1996 Sch 1 paras 6, 9(2); and amended by the Armed Forces Act 2001 Sch 1 para 6).

The persons who may act as the appropriate superior authority may be specified by regulations made by the Defence Council with respect to the investigation of charges and summary dealings: see the Army Act 1955 s 83(1), (2)(k), (l) (as substituted: see note 2 supra); and the Air Force Act 1955 s 83(1), (2)(k), (l) (as substituted: see note 2 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

9 Army Act 1955 s 76A(4) (as added (see note 2 supra); and amended by the Armed Forces Act 2001 Sch 1 para 1); Air Force Act 1955 s 76A(4) (as added (see note 2 supra); and amended by the Armed Forces Act 2001 Sch 1 para 5).

10 The information to be provided to a person afforded an opportunity of electing court-martial trial, the procedure for electing court-martial trial, and the period within which any such election may be made, may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(h), (i) (s 83 as substituted: see note 2 supra); and the Air Force Act 1955 s 83(1), (2)(h), (i) (s 83 as substituted: see note 2 supra). Such regulations do not constitute statutory instruments and are not recorded in this work. As to election for court-martial trial see para 355 post.

11 Army Act 1955 s 76A(5) (as added: see note 2 supra); Air Force Act 1955 s 76A(5) (as added: see note 2 supra). The procedure for requesting leave to withdraw an election for court-martial trial and for withdrawing any such election may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(j) (s 83 as substituted: see note 2 supra); and the Air Force Act 1955 s 83(1), (2)(j) (s 83 as substituted: see note 2 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay;

with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/A. PROCEDURE/(B) Summary Procedure under the Army Act 1955 and the Air Force Act 1955/355. Right to elect for court-martial trial.

355. Right to elect for court-martial trial.

Before dealing summarily with a charge¹, the commanding officer² or appropriate superior authority³ must afford the accused⁴ the opportunity of electing court-martial trial⁵ in relation to that charge⁶. Where in accordance with regulations⁷ two or more charges are together to be dealt with summarily, any election for court-martial trial must relate to all the charges concerned⁸. If the accused elects court-martial trial and does not withdraw his election with leave, the commanding officer or appropriate superior authority must refer to higher authority⁹ the charge to which the election relates, with a view to the trial of the accused by court-martial¹⁰.

If a charge has been referred to higher authority as a result of an election for court-martial trial and that election is withdrawn with leave, the higher authority must¹¹: (1) if the accused is an officer or warrant officer¹², refer the charge back to the appropriate superior authority¹³; or (2) if the accused is a non-commissioned officer¹⁴ or soldier or airman, refer the charge back to the commanding officer of the accused¹⁵, for the appropriate superior authority or commanding officer to deal summarily with the charge¹⁶.

Where a court-martial tries a person in pursuance of an election for court-martial trial¹⁷, the court must not award any punishment which could not have been awarded by the commanding officer or appropriate superior authority who would have dealt summarily with the preliminary charge¹⁸ if the election had not been made¹⁹.

1 As to references to dealing summarily with a charge see para 356 note 1 post.

2 For the meaning of 'commanding officer' see para 353 note 4 ante.

3 For the meaning of 'appropriate superior authority' see para 354 note 8 ante.

4 As to the accused see para 353 ante.

5 The information to be provided to a person afforded an opportunity of electing court-martial trial, the procedure for electing court-martial trial, and the period within which any such election may be made, may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(h), (i) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 1, 5); and the Air Force Act 1955 s 83(1), (2)(h), (i) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 6, 10). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Defence Council see para 2 ante.

6 Army Act 1955 s 76AA(1) (s 76AA added by the Armed Forces Discipline Act 2000 s 11(1)); Air Force Act 1955 s 76AA(1) (s 76AA added by the Armed Forces Discipline Act 2000 s 11(2)). As to military and air force courts-martial see para 480 et seq post.

Where under the Army Act 1955 s 76B(3) (as added) or the Air Force Act 1955 s 76B(3) (as added) (see para 356 post) a charge is amended or one charge is substituted for another, the Army Act 1955 s 76AA(1) (as added) or the Air Force Act 1955 s 76AA(1) (as added) applies in relation to the amended or substituted charge: Army Act 1955 s 76AA(6) (as so added); Air Force Act 1955 s 76AA(6) (as so added).

7 Ie under the Army Act 1955 s 83 (as substituted and amended) or the Air Force Act 1955 s 83 (as substituted and amended): see paras 353-354 ante, 357 post.

8 Army Act 1955 s 76AA(2) (as added: see note 6 supra); Air Force Act 1955 s 76AA(2) (as added: see note 6 supra).

9 The persons who may act as the higher authority may be specified by regulations made by the Defence Council: see the Army Act 1955 s 83(1), (2)(k), (l) (as substituted: see note 5 supra); and the Air Force Act 1955 s 83(1), (2)(k), (l) (as substituted: see note 5 supra). Such regulations do not constitute statutory instruments and are not recorded in this work.

10 Army Act 1955 s 76AA(3) (as added: see note 6 supra); Air Force Act 1955 s 76AA(3) (as added: see note 6 supra).

11 Army Act 1955 s 76AA(4) (as added: see note 6 supra); Air Force Act 1955 s 76AA(4) (as added: see note 6 supra).

12 As to references to warrant officers see para 336 note 6 ante.

13 Army Act 1955 s 76AA(4)(a) (as added: see note 6 supra); Air Force Act 1955 s 76AA(4)(a) (as added: see note 6 supra).

14 As to references to non-commissioned officers see para 336 note 7 ante.

15 Army Act 1955 s 76AA(4)(b) (as added: see note 6 supra); Air Force Act 1955 s 76AA(4)(b) (as added: see note 6 supra).

16 Army Act 1955 s 76AA(4) (s 76AA as added: see note 6 supra); Air Force Act 1955 s 76AA(4) (s 76AA as added: see note 6 supra). The Army Act 1955 s 76AA(1) (as added) and the Air Force Act 1955 s 76AA(1) (as added) do not enable the accused to make a further election for court-martial trial in relation to a charge which has been referred back to the appropriate superior authority or commanding officer under the Army Act 1955 s 76AA(4) (as added) or the Air Force Act 1955 s 76AA(4) (as added): Army Act 1955 s 76AA(5) (as so added); Air Force Act 1955 s 76AA(5) (as so added).

17 A court-martial is not to be regarded as trying a person in pursuance of an election for court-martial trial if, since the election was made, the prosecuting authority has referred the charge back to the commanding officer under the Army Act 1955 s 83BB (as added and amended) or the Air Force Act 1955 s 83BB (as added and amended) (see para 315 ante): Army Act 1955 s 85A(3) (s 85A added by the Armed Forces Discipline Act 2000 s 12(1)); Air Force Act 1955 s 85A(3) (s 85A added by the Armed Forces Discipline Act 2000 s 12(1)). As to the prosecuting authority see para 315 ante.

18 'The preliminary charge' means the charge which would have been dealt with summarily had the accused not elected court-martial trial: Army Act 1955 s 85A(2) (as added: see note 17 supra); Air Force Act 1955 s 85A(2) (as added: see note 17 supra).

19 Army Act 1955 s 85A(1) (as added: see note 17 supra); Air Force Act 1955 s 85A(1) (as added: see note 17 supra).

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined

by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/A. PROCEDURE/(B) Summary Procedure under the Army Act 1955 and the Air Force Act 1955/356. Summary dealings

356. Summary dealings

Where a charge is to be dealt with summarily¹ by a commanding officer² or appropriate superior authority³, if, before determining whether the charge is proved, he considers it appropriate to do so, the commanding officer or appropriate superior authority may amend the charge or substitute another charge for it and treat the amended or substituted charge as the charge to be dealt with summarily by him⁴. If, before determining whether the charge is proved, he considers that it should not be dealt with summarily, the commanding officer or appropriate superior authority may refer the charge to higher authority⁵. If the commanding officer or appropriate superior authority determines that the charge has been proved, he must record a finding that the charge has been proved and award punishment accordingly⁶.

1 References in the Army Act 1955 and the Air Force Act 1955 to dealing summarily with a charge are references to the taking of the following action, namely, determining whether the charge is proved and, accordingly, either dismissing the charge or recording a finding that the charge has been proved and awarding punishment: Army Act 1955 s 76B(2) (s 76B added by the Armed Forces Act 1996 s 5, Sch 1 paras 1, 2); Air Force Act 1955 s 76B(2) (s 76B added by the Armed Forces Act 1996 Sch 1 paras 6, 7). As to the charges which are capable of being dealt with summarily see para 353 note 14 ante.

2 For the meaning of 'commanding officer' see para 353 note 4 ante.

3 Army Act 1955 s 76B(1) (s 76B as added: see note 1 supra); Air Force Act 1955 s 76B(1) (s 76B as added: see note 1 supra). For the meaning of 'appropriate superior authority' see para 354 note 8 ante.

The Army Act 1955 s 76B (as added and amended) and the Air Force Act 1955 s 76B (as added and amended) have effect subject to any power of the commanding officer or appropriate superior authority under the Army Act 1955 s 103A(1) (as added) or the Air Force Act 1955 s 103A(1) (as added) (see para 482 post) to direct that the charge be tried by a field general court-martial: Army Act 1955 s 76B(9) (as so added); Air Force Act 1955 s 76B(9) (as so added). As to field general courts-martial see para 480 et seq post.

Nothing in the Army Act 1955 s 76A (as added and amended), s 76AA (as added) or s 76B (as added and amended) and the Air Force Act 1955 s 76A (as added and amended), s 76AA (as added) or s 76B (as added and amended) may be taken to prevent an officer from acting as both higher authority and appropriate superior authority in relation to a charge: Army Act 1955 s 76B(10) (as so added; and amended by the Armed Forces Discipline Act 2000 s 11(3)(c)); Air Force Act 1955 s 76B(10) (as so added; and amended by the Armed Forces Discipline Act 2000 s 11(3)(c)). As to powers of the higher authority see para 354 ante.

4 Army Act 1955 s 76B(3) (as added: see note 1 supra); Air Force Act 1955 s 76B(3) (as added: see note 1 supra).

5 Army Act 1955 s 76B(4) (as added: see note 1 supra); Air Force Act 1955 s 76B(4) (as added: see note 1 supra).

6 Army Act 1955 s 76B(7) (as added (see note 1 supra); and amended by the Armed Forces Discipline Act 2000 s 11(3)(b)); Air Force Act 1955 s 76B(7) (as added (see note 1 supra); and amended by the Armed Forces Discipline Act 2000 s 11(3)(b)). As to the punishments which may be awarded on a summary dealing see para 357 post.

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding

officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by

commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/A. PROCEDURE/(B) Summary Procedure under the Army Act 1955 and the Air Force Act 1955/357. Punishments available on summary dealings.

357. Punishments available on summary dealings.

Where a commanding officer¹ or appropriate superior authority² records a finding that a charge against an accused³ has been proved⁴, the commanding officer may award one or more of the following punishments⁵:

- 298 (1) if the offender is a soldier or airman, as the case may be, detention for a period not exceeding 60 days⁶;
- 299 (2) fine⁷;
- 300 (3) if the offender is a non-commissioned officer⁸, severe reprimand or reprimand⁹;
- 301 (4) where the offence has occasioned any expense, loss or damage, stoppages¹⁰;
- 302 (5) any minor punishment for the time being authorised by the Defence Council¹¹.

The commanding officer may not award a fine or minor punishment for an offence for which he awards detention¹².

The appropriate superior authority may award one or more of the following punishments¹³:

- 303 (a) except in the case of a warrant officer¹⁴, forfeiture of seniority for a specified term or otherwise¹⁵;
- 304 (b) fine¹⁶;
- 305 (c) severe reprimand or reprimand¹⁷;
- 306 (d) where the offence has occasioned any expense, loss or damage, stoppages¹⁸.

The appropriate superior authority may not award a fine for an offence for which he awards forfeiture of seniority¹⁹.

Except in the case of a civil offence committed by a person subject to military or air force law²⁰, the amount of a fine may not exceed the amount of the offender's pay for 28 days²¹. In the case of an offence committed by such a person where the corresponding civil offence²² is a summary offence, the amount of a fine may not exceed the amount of the offender's pay for 28 days, or (if less) the maximum amount of the fine which could be imposed by a civil court²³ on summary conviction²⁴. In the case of such an offence where the corresponding civil offence is an indictable offence, the amount of a fine may not exceed the amount of the offender's pay for 28 days, or (if less) the maximum amount of the fine which could be imposed by a civil court on conviction on indictment²⁵. For these purposes²⁶, a day's pay is taken to be²⁷: (i) subject to head (ii) below, the gross pay which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the punishment is awarded²⁸; (ii) if the offender is a special member²⁹ of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member³⁰ of that reserve force of the same rank³¹.

For the purposes of military law, if the offender is a lance-corporal or lance-bombardier, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender to be reduced to the ranks³². If the offender is an acting warrant officer³³ or non-commissioned officer, the commanding officer may, if he awards no other

punishment or no other punishment except stoppages, order the offender³⁴: (A) to revert to his permanent rank³⁵; (B) to assume an acting rank lower than that held by him but higher than his permanent rank³⁶; or (C) where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks³⁷.

For the purposes of air force law, if the offender is an acting warrant officer or non-commissioned officer, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the offender³⁸: (aa) to revert to his permanent rank³⁹; or (bb) to assume an acting rank lower than that held by him but higher than his permanent rank⁴⁰.

The punishments which may be awarded on a summary dealing by a commanding officer or appropriate superior authority⁴¹ may be limited in specified cases by regulations made by the Defence Council⁴².

1 For the meaning of 'commanding officer' see para 353 note 4 ante.

2 For the meaning of 'appropriate superior authority' see para 354 note 8 ante.

3 As to the accused see para 353 ante.

4 Army Act 1955 s 76C(1) (s 76C added by the Armed Forces Act 1996 s 5, Sch 1 paras 1, 2); Air Force Act 1955 s 76C(1) (s 76C added by the Armed Forces Act 1996 Sch 1 paras 6, 7).

5 Army Act 1955 s 76C(2) (as added: see note 4 supra); Air Force Act 1955 s 76C(2) (as added: see note 4 supra).

6 Army Act 1955 s 76C(2)(a) (as added: see note 4 supra); Air Force Act 1955 s 76C(2)(a) (as added: see note 4 supra). As to the commencement, duration and suspension of sentences of imprisonment and detention see para 476 et seq post. As to consecutive terms of imprisonment and detention see para 440 post.

7 Army Act 1955 s 76C(2)(b) (as added: see note 4 supra); Air Force Act 1955 s 76C(2)(b) (as added: see note 4 supra).

8 As to references to non-commissioned officers see para 336 note 7 ante.

9 Army Act 1955 s 76C(2)(c) (as added: see note 4 supra); Air Force Act 1955 s 76C(2)(c) (as added: see note 4 supra).

10 Army Act 1955 s 76C(2)(d) (as added: see note 4 supra); Air Force Act 1955 s 76C(2)(d) (as added: see note 4 supra). As to the meaning of 'stoppages' see para 424 note 17 post.

11 Army Act 1955 s 76C(2)(e) (as added: see note 4 supra); Air Force Act 1955 s 76C(2)(e) (as added: see note 4 supra). As to the Defence Council see para 2 ante.

12 Army Act 1955 s 76C(4) (as added: see note 4 supra); Air Force Act 1955 s 76C(4) (as added: see note 4 supra).

13 Army Act 1955 s 76C(3) (as added: see note 4 supra); Air Force Act 1955 s 76C(3) (as added: see note 4 supra).

14 As to references to warrant officers see para 336 note 6 ante.

15 Army Act 1955 s 76C(3)(a) (as added: see note 4 supra); Air Force Act 1955 s 76C(3)(a) (as added: see note 4 supra).

16 Army Act 1955 s 76C(3)(b) (as added: see note 4 supra); Air Force Act 1955 s 76C(3)(b) (as added: see note 4 supra).

17 Army Act 1955 s 76C(3)(c) (as added: see note 4 supra); Air Force Act 1955 s 76C(3)(c) (as added: see note 4 supra).

18 Army Act 1955 s 76C(3)(d) (as added: see note 4 supra); Air Force Act 1955 s 76C(3)(d) (as added: see note 4 supra).

19 Army Act 1955 s 76C(5) (as added: see note 4 supra); Air Force Act 1955 s 76C(5) (as added: see note 4 supra).

20 Is an offence against the Army Act 1955 s 70 (as amended; prospectively further amended) or the Air Force Act 1955 s 70 (as amended; prospectively further amended): see para 422 post.

21 Army Act 1955 s 76C(6) (as added: see note 4 supra); Air Force Act 1955 s 76C(6) (as added: see note 4 supra).

22 As to the meaning of 'corresponding civil offence' see para 422 note 6 post.

23 For the meaning of 'civil court' see para 57 note 2 ante.

24 Army Act 1955 s 76C(7) (as added: see note 4 supra); Air Force Act 1955 s 76C(7) (as added: see note 4 supra).

25 Army Act 1955 s 76C(8) (as added: see note 4 supra); Air Force Act 1955 s 76C(8) (as added: see note 4 supra).

26 Is for the purposes of the Army Act 1955 s 76C(6)-(8) (as added) and the Air Force Act 1955 s 76C(6)-(8) (as added): see the text to notes 20-25 supra.

27 Army Act 1955 s 76C(9) (s 76C as added (see note 4 supra); and s 76C(9) substituted, and s 76C(9A) added, by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 3(4)); Air Force Act 1955 s 76C(9) (s 76C as added (see note 4 supra); and s 76C(9) substituted, and s 76C(9A) added, by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 3(4)).

28 Army Act 1955 s 76C(9)(a) (as added and substituted: see note 27 supra); Air Force Act 1955 s 76C(9)(a) (as added and substituted: see note 27 supra).

29 As to special members see para 251 ante.

30 As to ordinary members see para 251 ante.

31 Army Act 1955 s 76C(9)(b) (as added and substituted: see note 27 supra); Air Force Act 1955 s 76C(9)(b) (as added and substituted: see note 27 supra).

32 Army Act 1955 s 76C(10) (as added: see note 4 supra).

33 As to references to acting warrant officers see para 336 notes 6-7 ante.

34 Army Act 1955 s 76C(11) (as added: see note 4 supra).

35 Ibid s 76C(11)(a) (as added: see note 4 supra).

36 Ibid s 76C(11)(b) (as added: see note 4 supra).

37 Ibid s 76C(11)(c) (as added: see note 4 supra).

38 Air Force Act 1955 s 76C(10) (as added: see note 4 supra).

39 Ibid s 76C(10)(a) (as added: see note 4 supra).

40 Ibid s 76C(10)(b) (as added: see note 4 supra).

41 Is under the Army Act 1955 s 76C (as added and amended) or the Air Force Act 1955 s 76C (as added and amended): see the text and notes 1-40 supra.

42 Army Act 1955 s 83(1), (2)(g) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 1, 5); and the Air Force Act 1955 s 83(1), (2)(g) (s 83 substituted by the Armed Forces Act 1996 Sch 1 paras 6, 10). Such regulations do not constitute statutory instruments and are not recorded in this work.

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

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358. Review of summary findings and awards.

Where a charge has been dealt with summarily¹ and a finding has been recorded that the charge has been proved², the finding or any punishment³ awarded, or both, may be reviewed at any time⁴. A review must be carried out in accordance with the provisions of Queen's Regulations⁵, and may be carried out by⁶: (1) the Defence Council⁷; (2) any military, naval or air force officer superior in command to the officer who dealt summarily with the charge⁸; (3) a general officer or brigadier in the case of the army, or air officer in the case of the air force, appointed by the Defence Council to carry out the review or any class of review which includes the review⁹.

Where the period of 14 days within which an appeal must be brought to the summary appeal court¹⁰ has expired, and no appeal has been brought¹¹, the authority carrying out a review of the summary finding and award¹² may, with the leave of the summary appeal court¹³, refer the finding or any punishment awarded, or both, to that court to be considered by it as on an appeal¹⁴. Where an appeal has been brought to the summary appeal court¹⁵ and it appears to the authority carrying out a review, on consideration of matters appearing to him not to have been brought to the notice of the summary appeal court on the appeal, to be expedient to do so, he may, with the leave of the summary appeal court, refer the finding or any punishment awarded, or both, including any finding or punishment substituted or awarded by the summary appeal court, to that court to be considered or reconsidered by that court as on an appeal¹⁶. In a case where exceptionally the authority carrying out a review of a finding considers it necessary to do so, the authority may quash that finding and, if the punishment awarded relates only to that finding, quash the punishment awarded in consequence of that finding¹⁷.

1 As to references to dealing summarily with a charge see para 356 note 1 ante.

2 Army Act 1955 s 115(1) (s 115 substituted by the Armed Forces Act 1996 s 16, Sch 5 paras 1, 6); Air Force Act 1955 s 115(1) (s 115 substituted by the Armed Forces Act 1996 Sch 5 paras 1, 7).

3 As to the punishments available on summary dealings see para 357 ante.

4 Army Act 1955 s 115(3) (as substituted (see note 2 supra); and amended by the Armed Forces Discipline Act 2000 ss 25, 27, Sch 3 para 19(1), (3), Sch 4); Air Force Act 1955 s 115(3) (as substituted (see note 2 supra); and amended by the Armed Forces Discipline Act 2000 Sch 3 para 19(1), (3), Sch 4).

5 Army Act 1955 s 115(4) (as substituted: see note 2 supra); Air Force Act 1955 s 115(4) (as substituted: see note 2 supra).

6 Army Act 1955 s 115(5) (as substituted: see note 2 supra); Air Force Act 1955 s 115(5) (as substituted: see note 2 supra).

7 Army Act 1955 s 115(5)(a) (as substituted: see note 2 supra); Air Force Act 1955 s 115(5)(a) (as substituted: see note 2 supra). As to the Defence Council see para 2 ante.

8 Army Act 1955 s 115(5)(b) (as substituted: see note 2 supra); Air Force Act 1955 s 115(5)(b) (as substituted: see note 2 supra). As to dealing with charges summarily see para 353 et seq ante.

9 Army Act 1955 s 115(5)(c) (as substituted: see note 2 supra); Air Force Act 1955 s 115(5)(c) (as substituted: see note 2 supra).

10 le the period referred to in the Army Act 1955 s 83ZE(2) (as added) or the Air Force Act 1955 s 83ZE(2) (as added): see para 366 post. As to the summary appeal court see para 359 et seq post.

11 le under the Army Act 1955 s 83ZE (as added) or the Air Force Act 1955 s 83ZE (as added): see para 366 post.

12 le under the Army Act 1955 s 115 (as substituted and amended) or the Air Force Act 1955 s 115 (as substituted and amended).

13 A reference to the summary appeal court under the Army Act 1955 s 115(5A) (as added) or s 115(5B) (as added), or the Air Force Act 1955 s 115(5A) (as added) or s 115(5B) (as added), as the case may be, is treated as an appeal brought by the person to whom the finding or punishment relates against the finding or punishment: Army Act 1955 s 115(5C) (s 115(5A)-(5E) added by the Armed Forces Discipline Act 2000 Sch 3 para 19(1), (4)); Air Force Act 1955 s 115(5C) (s 115(5A)-(5E) added by the Armed Forces Discipline Act 2000 Sch 3 para 19(1), (4)).

14 Army Act 1955 s 115(5A) (as added: see note 13 supra); Air Force Act 1955 s 115(5A) (as added: see note 13 supra).

15 le under the Army Act 1955 s 83ZE (as added) or the Air Force Act 1955 s 83ZE (as added): see para 366 post.

16 Army Act 1955 s 115(5B) (as added: see note 13 supra); Air Force Act 1955 s 115(5B) (as added: see note 13 supra).

17 Army Act 1955 s 115(5D) (as added: see note 13 supra); Air Force Act 1955 s 115(5D) (as added: see note 13 supra). The powers conferred by the Army Act 1955 s 115(5D) (as added) and the Air Force Act 1955 s 115(5D) (as added) are exercisable whether or not the conditions in the Army Act 1955 s 115(5A) (as added) or the Air Force Act 1955 s 115(5A) (as added) (see the text and notes 10-14 supra), as the case may be, are satisfied: Army Act 1955 s 115(5E) (as added: see note 13 supra); Air Force Act 1955 s 115(5E) (as added: see note 13 supra).

UPDATE

348-358 Procedure

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. As to the investigation of service offences by commanding officers, see now the Armed Forces Act 2006 s 115; and PARA 317A.1. For the meaning of 'service offence' see PARA 451. For the circumstances in which a commanding officer has the power to charge, see ss 119, 120; and as to the powers of a commanding officer after charge to amend, substitute or discontinue proceedings on the charge, see s 123. As to the procedure for bringing a charge under s 120, and for further provision in relation to the amendment, substitution or adding of charges under s 123, see the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009, SI 2009/2055, regs 11, 13, 15, Schedule. The commanding officer may hear charges which are allocated for summary hearing: see the Armed Forces Act 2006 s 124. As to the charges which are capable of being heard summarily, see ss 52, 53, Sch 1 Pt 1. Certain charges may be heard summarily only with the permission of higher authority, or if the commanding officer is above the rank of rear admiral, major-general or air vice-marshal: see s 54, Sch 1 Pt 2. The officer who is the 'commanding officer' of a person for the purposes of any provision made by or under the 2006 Act is to be determined by or under regulations made by the Defence Council: s 360. 'Higher authority' in relation to a commanding officer, means any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer: s 361.

A commanding officer hearing a charge summarily must give the accused the opportunity to be tried by the Court Martial: see s 129. For further consequences of election for Court Martial, see s 130. As to the powers of a commanding officer at a summary hearing see s 131, and as to the punishments which are available to a

commanding officer who has found a charge proven, see s 132; and the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215. Limits are placed on the amount of detention a commanding officer may award and the circumstances in which he may do so: see s 133. A commanding officer must have extended powers before awarding forfeiture of seniority or making a reduction in rank: see ss 134, 135. A commanding officer may fine, without extended powers, an officer or warrant officer 14 days' pay and any other person 28 days' pay; with extended powers he can fine an officer or warrant officer up to 28 days' pay: see s 136(1)-(3). For these purposes a day's pay is (1) subject to head (2), the gross pay which is (or would apart from any forfeiture be) issuable to the offender in respect of the day when the punishment is awarded; (2) if the offender is a special member of a reserve force, the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank or rate: s 136(4). If the offender is a member of a reserve force who is not on duty on the day the punishment is awarded, for the purposes of s 136(4) he is to be taken to have been on duty then: s 136(5). 'Special member' and 'ordinary member' have the same meanings as in the Reserve Forces Act 1996: Armed Forces Act 2006 s 136(6). The maximum amount for a service compensation order that may be awarded by a commanding officer is set at £1,000: see s 137. For the meaning of 'service compensation order' see PARA 424A.2. Certain punishments may not be awarded in combination with each other: see s 138; and SI 2009/1215. Where a commanding officer is hearing a criminal conduct charge on its own, he may only award detention if the Court Martial would be able to do so for that offence and any fine must not exceed that which the Court Martial could have awarded for that offence: see s 139(1). Where the commanding officer makes an award of punishment relating to more than one offence he may not award detention unless the Court Martial could have done so for at least one of the offences; and, where the offences are criminal conduct offences, he may not award a fine greater than the total of the fines that the Court Martial could have awarded under s 42 (see PARA 422): see s 139(2), (3).

As to the review of summary findings and punishments, see s 152. The Secretary of State may by rules make provision with respect to the summary hearing of charges by commanding officers and hearings as regards the making of orders under s 193 activating suspended sentences of service detention passed on an offender by a commanding officer: see s 153. In exercise of this power, the Secretary of State has made the Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules 2009, SI 2009/1216.

For provision relating to the commencement of terms of service detention awarded by a commanding officer, see the Armed Forces Act 2006 s 290. Provision is also made for the commencement of detention where a commanding officer makes an award of service detention consecutive to an existing award (s 291), and where an officer makes an order activating a suspended sentence of service detention (s 292).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(A) The Summary Appeal Court under the Naval Discipline Act 1957/359. Establishment and constitution of the summary appeal court.

B. THE SUMMARY APPEAL COURT

(A) THE SUMMARY APPEAL COURT UNDER THE

359. Establishment and constitution of the summary appeal court.

The summary appeal court was established, and its procedure is governed, by the Naval Discipline Act 1957¹. The purpose of the summary appeal court is to hear appeals against findings recorded and punishments awarded on a summary trial² conducted under the Naval Discipline Act 1957. It is a complete rehearing³ in open court⁴ and the appellant is not bound by any plea of guilty entered at the summary trial⁵.

The court consists of judge advocates appointed by the Chief Naval Judge Advocate⁶, and officers qualified⁷ to be members of the court⁸. The court may sit in two or more divisions and may sit in any place, whether within or outside the United Kingdom⁹. There is a court administration officer for the court, who is an officer, or other person, appointed by the Defence Council¹⁰. The court sits at such times and in such places as may be determined by the court administration officer¹¹. The court administration officer performs such functions as may be prescribed by rules¹².

For the purpose of hearing an appeal, the summary appeal court must consist of one of the judge advocates so appointed¹³, and two officers qualified¹⁴ for membership of the court¹⁵. The judge advocate for any appeal must be specified by or on behalf of the Chief Naval Judge Advocate¹⁶, and the other members of the court for any appeal must be specified by or on behalf of the court administration officer¹⁷. At any sitting of the court, the most senior member of the court at that sitting must preside¹⁸. The court administration officer may appoint court officials as appropriate¹⁹.

Every member of the court must, before first sitting as a member of the court, have administered to him by the prescribed person²⁰ in the prescribed manner an oath in the prescribed form²¹.

1 See the Naval Discipline Act 1957 s 52FF(1) (s 52FF added by the Armed Forces Discipline Act 2000 s 14(2)). The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court: see the Naval Discipline Act 1957 s 52FP (added by the Armed Forces Discipline Act 2000 s 22(2)). In exercise of this power, the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, have been made. As to the Secretary of State see para 2 ante.

2 Naval Discipline Act 1957 s 52FF(1) (as added: see note 1 supra). As to summary trial see para 350 ante. For general guidance on the summary appeal court see the Manual of Naval Law vol II Chs 17-24. Many procedures of the summary appeal court are similar to those at courts-martial: see para 448 et seq post. Proceedings of the summary appeal court are conducted in accordance with the law of England and Wales: see the Naval Discipline Act 1957 s 52FL(4) (as added); the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27; and para 361 post.

3 See para 361 post.

4 See para 361 post.

5 Since an appeal to the summary appeal court is a hearing de novo, a previous plea at the summary hearing cannot be binding: cf (in the context of criminal appeals generally) CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1837 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 44 et seq.

6 Naval Discipline Act 1957 s 52FF(2)(a) (as added: see note 1 supra), s 52FG(1) (s 52FG added by the Armed Forces Discipline Act 2000 s 15(2)). As to the Chief Naval Judge Advocate see para 445 post.

No person may be appointed under these provisions unless he is qualified under the Naval Discipline Act 1957 s 53B(2) (as added) (see para 453 post) for appointment as the judge advocate in relation to a court-martial: s 52FG(2) (as so added). As to naval courts-martial see para 448 et seq post.

7 An officer is qualified for membership of the summary appeal court if he is a naval officer of or above the rank of lieutenant who has held a commission in any of Her Majesty's naval, military, or air forces for a period of not less than three years or periods amounting in the aggregate to not less than three years: *ibid* s 52FH(1) (s 52FH added by the Armed Forces Discipline Act 2000 s 16(3)). Rules under the Naval Discipline Act 1957 s 52FP (as added) (see note 1 supra) may specify circumstances in which any other naval officer or a military or air force officer is qualified for membership of the court: s 52FH(2) (as so added); and see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, rr 23, 24. 'Naval officer' means an officer belonging to Her Majesty's naval forces and subject to naval discipline: Naval Discipline Act 1957 s 52FH(4) (as so added). 'Military officer' means an officer belonging to Her Majesty's military forces and subject to military law: s 52FH(4) (as so added). 'Air force officer' means an officer belonging to Her Majesty's air forces and subject to air force law: s 52FH(4) (as so added). As to the persons subject to naval discipline, military or air force law see para 306 et seq ante.

The following persons are not qualified for membership of the court:

- 87 (1) the court administration officer (s 52FH(3)(a) (as so added));
- 88 (2) an officer under the command of the court administration officer (s 52FH(3)(b) (as so added));
- 89 (3) the prosecuting authority (see para 315 ante) (s 52FH(3)(c) (as so added));
- 90 (4) any person who has a general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742) (Naval Discipline Act 1957 s 52FH(3)(d) (as so added));
- 91 (5) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary (s 52FH(3)(e) (as so added));
- 92 (6) a member of the Bar of Northern Ireland (s 52FH(3)(f) (as so added));
- 93 (7) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules (s 52FH(3)(g) (as so added)); or
- 94 (8) any person who is, or has at any time during the preceding five years been, a member of the Royal Navy Regulating Branch (s 52FH(3)(h) (as so added)).

As to the meaning of 'Commonwealth country' see para 20 note 6 ante.

It is the responsibility of the court administration officer to ensure, so far as possible, that the court is and can be seen to be impartial and independent: Manual of Naval Law vol II Ch 17 art 1733.3.

Where the summary appeal court hears an appeal brought by any civilian to whom the Naval Discipline Act 1957 applies by virtue of s 118 (as amended; prospectively further amended) (see para 311 ante) and the court would otherwise include two officers qualified under s 52FH (as added) for membership of the court, the court may include in place of either or both of them a corresponding number of persons who are in the service of the Crown and are civilians to whom the Naval Discipline Act 1957 applies by virtue of s 118 (as amended; prospectively further amended): see Sch 4 para 4C (added by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 18).

8 Naval Discipline Act 1957 s 52FF(2)(b) (as added: see note 1 supra).

9 *Ibid* s 52FF(3) (as added: see note 1 supra). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

10 *Ibid* s 52FF(4) (as added: see note 1 supra). As to the Defence Council see para 2 ante.

11 Ibid s 52FF(5) (as added: see note 1 supra). As to notification by the court administration officer of the time and place for the hearing of an appeal see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 22.

12 Naval Discipline Act 1957 s 52FF(6) (as added: see note 1 supra). The rules referred to in the text are rules made under s 52FP (as added): see note 1 supra.

13 le under s 52FG (as added): see the text and note 6 supra.

14 le under ibid s 52FH (as added): see note 7 supra.

15 Ibid s 52FJ(1) (s 52FJ added by the Armed Forces Discipline Act 2000 s 17(2)). This provision has effect subject to any provision made by virtue of the Naval Discipline Act 1957 s 52FP (as added) (see note 1 supra): s 52FJ(2) (as so added).

16 Ibid s 52FJ(3) (as added: see note 15 supra).

17 Ibid s 52FJ(4) (as added: see note 15 supra). In specifying members of the court under s 52FJ(4) (as added) the person doing so must ensure that at least one member of the court for any appeal is of or above the rank of commander: s 52FJ(5) (as so added). The court administration officer must specify reserve members of the court: see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 25.

18 Naval Discipline Act 1957 s 52FJ(6) (as added: see note 15 supra).

19 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 26. The court officials that may be appointed are the clerk of the court, the officer of the court, the court recorder and the interpreter: see r 26. A provost marshal may be appointed by or on behalf of the court administration officer when the court administration officer deems it necessary: Manual of Naval Law vol II Ch 17 art 1736. As to the duties of court officials generally see para 454 post.

20 'Prescribed' means prescribed by the Secretary of State by order made by statutory instrument: Naval Discipline Act 1957 s 52FQ(2) (s 52FQ added by the Armed Forces Discipline Act 2000 s 23(2)). Such an order is subject to annulment in pursuance of a resolution of either House of Parliament: Naval Discipline Act 1957 s 52FQ(3) (as so added). As to the prescribed person see the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000, SI 2000/2376, art 2.

21 Naval Discipline Act 1957 s 52FQ(1) (as added: see note 20 supra). As to the prescribed form and manner of administration of oaths see the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000, SI 2000/2376, art 2(1), Schedule.

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(A) The Summary Appeal Court under the Naval Discipline Act 1957/360. Right of appeal and pre-trial procedures.

360. Right of appeal and pre-trial procedures.

Any person in respect of whom a charge has been tried summarily¹, and a finding of guilt has been recorded, may appeal to the summary appeal court² against the finding or against any punishment awarded, or against both³. An appeal must be brought within the period of 14 days beginning with the date on which the punishment was awarded ('the initial period') or within such longer period as the court may, before the end of the initial period, allow⁴. The court may at any later time give leave for an appeal to be brought⁵. A person may apply to extend the period of time for bringing an appeal and for leave to bring an appeal out of time by serving on his commanding officer notice of an application⁶. The powers of the court to determine such an application are exercised by a judge advocate sitting alone⁷, and an application is determined without a hearing unless the applicant requests a hearing or the judge advocate directs that a hearing should take place⁸.

A person may bring an appeal by serving on his commanding officer a notice of appeal⁹. The commanding officer must as soon as reasonably practicable forward the notice of appeal to the court administration officer, and serve a copy of it on the prosecuting authority together with supporting documentation¹⁰. The authority carrying out a review of a summary finding or punishment award may, with the leave of the summary appeal court, refer the finding or any punishment awarded, or both, to the court to be considered or reconsidered by it as on an appeal¹¹.

A person may abandon an appeal, whether wholly or in part, at any time prior to its determination¹².

The prosecuting authority is the respondent on any appeal¹³ and as such it must give notice in writing to the court administration officer indicating whether or not he intends to contest an appeal against finding¹⁴. Where the respondent gives notice that he does not intend to contest an appeal, the court must quash the finding against which the appeal is brought¹⁵. Where the respondent gives notice that he intends to contest an appeal against finding, he must serve papers (including a statement of the respondent's case and copies of documentary evidence) on the appellant's commanding officer and the court administration officer¹⁶. The charge or charges must be the same as those put to the appellant at summary trial¹⁷.

Where the respondent does not intend to call as a witness any person whose statement has been served on the appellant as part of the evidence for the respondent, or any person in respect of whose evidence he has served notice¹⁸, unless the appellant waives the requirement, the respondent must serve notice in writing on the appellant that he does not intend to call that person, or tender that person at the hearing of the appeal for cross-examination by the appellant¹⁹.

Where the appeal relates only to any punishment awarded, the respondent must serve on the appellant's commanding officer a statement of the information which the respondent proposes to present to the court²⁰ and copies of any documents or other material served on the respondent²¹. On receipt of the documents, the appellant's commanding officer must as soon as reasonably practicable serve them on the appellant²². On receipt of the statement, the appellant must as soon as reasonably practicable give notice in writing to the respondent of any fact or matter contained in the statement on which he takes issue with the respondent²³.

The court may decide to hear two or more appeals at the same time where it appears to be in the interests of justice to do so²⁴.

The court may direct the court administration officer to convene a preliminary hearing prior to the commencement of the hearing of the appeal either of its own motion or on the application of the appellant or the respondent²⁵. A preliminary hearing takes place before the judge advocate in chambers²⁶, and allows any matter relating to or affecting the hearing of the appeal to be considered prior to the hearing of the appeal²⁷.

1 As to summary trial see para 350 ante.

2 As to the establishment and constitution of the summary appeal court see para 359 ante.

3 Naval Discipline Act 1957 s 52FK(1) (s 52FK added by the Armed Forces Discipline Act 2000 s 18(2)).

4 Naval Discipline Act 1957 s 52FK(2) (as added: see note 3 supra).

5 Ibid s 52FK(3) (as added: see note 3 supra).

6 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 9. As to the form in which notice of application must be given see r 9(2), (3), Sch 2. As to the service of documents see rr 3-4, Sch 1.

7 See ibid r 10(1). As to the appointment of judge advocates in relation to the summary appeal court see para 359 ante.

8 See ibid r 10(1), (2). Where the judge advocate is minded to refuse an application without a hearing, the court administration officer must give notice in writing of that fact to the applicant: r 10(3). On receipt of such a notice, the applicant may request a hearing of the application by giving notice in writing to the court administration officer before the end of the period of 14 days beginning with the date of the notice: r 10(4). Where there is a requirement for a hearing, the court administration officer must determine the time and place of the hearing, and serve notice of those matters on the applicant and the prosecuting authority: r 10(5). If, having notified a person, the court administration officer changes the time or place of the hearing, he must notify the person of the change: r 10(6). As to hearings of applications see r 14. As to the prosecuting authority see para 316 ante.

The judge advocate must give notice in writing of his decision on an application to the court administration officer who must serve a copy of it on the applicant, the applicant's commanding officer, the prosecuting authority, and where the punishment awarded in respect of any charge to which the application relates was approved by higher authority in accordance with regulations made under the Naval Discipline Act 1957 s 52F (as added and amended) (see paras 348-350 ante), that authority: Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 11(1). Where the judge advocate refuses an application, he must set out in writing his reasons for doing so, and those reasons must be included in the notice so given: r 11(2).

The Naval Discipline Act 1957 and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, do not give guidance as to the criteria for allowing an appeal out of time. It is submitted that it is likely that the judge advocate would determine the application by applying a broad test of whether it would be just and fair to grant an extension of time, having taken into account whether the applicant has provided a reasonable explanation for having failed to apply within 14 days.

9 See ibid r 8(1), (2). As to the form in which notice of appeal must be given see r 8, Sch 2. For further guidance on summary trial appeals see the Manual of Naval Law vol I Ch 11 Section II (arts 1110-1114), Annex 11A.

10 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 8(3). For the supporting documentation see r 8(3), (4), (5).

11 See the Naval Discipline Act 1957 s 71B(5A)-(5E) (as added); and para 352 ante. As to the practice and procedure to be followed in determining an application for leave see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, rr 12, 13. As to hearings of applications see r 14. For further guidance on the review of summary trials see the Manual of Naval Law vol I Ch 11 Section IV (arts 1116-1119) (which lists the specific officers who are authorised to act as reviewing authorities on behalf of the Defence Council). As to the Defence Council see para 2 ante. It should be noted that the power to review summary convictions is a separate power from that relating to the review of court-martial findings and sentences: see paras 473-474 post.

12 See ibid r 15.

- 13 See the Naval Discipline Act 1957 s 52FK(4) (as added: see note 3 supra). As to the prosecuting authority see para 316 ante.
- 14 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 16.
- 15 See *ibid* r 17.
- 16 See *ibid* r 18. As to the service of additional evidence prior to the hearing of an appeal see r 19.
- 17 See para 361 post. There is no power for the prosecuting authority to prefer a new charge or amend an existing charge.
- 18 *Ie* under the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 48: see para 361 post.
- 19 *Ibid* r 20.
- 20 *Ie* in pursuance of *ibid* r 60: see para 361 post.
- 21 *Ibid* r 21(1). The text refers to copies of any documents or other material served on the respondent under, as the case may be, r 8(3)(b), r 9(5)(b) or r 12(6).
- 22 *Ibid* r 21(2).
- 23 *Ibid* r 21(3).
- 24 *Ibid* r 32(1). As to the practice and procedure to be followed by the court in deciding to hear two or more appeals at the same time see r 32.
- 25 See *ibid* rr 33-34. For further guidance on the order of procedure for applications and preliminary hearings see the Manual of Naval Law vol II Ch 23 Section VI (arts 2350-2352).
- 26 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 36. As to the presence of persons at preliminary hearings by live television link see r 37.
- 27 See *ibid* r 35. Such matters include: (1) any question as to the admissibility of evidence; (2) any question as to the jurisdiction of the court in relation to any issue raised on the appeal; (3) any question as to whether the whole or any part of the hearing of the appeal should not be held in open court; (4) any question as to the exercise by the court of its powers under r 32 (power of the court to hear more than one appeal at the same time: see the text and note 24 supra); (5) any matter relating to the evidence to be given at the hearing of the appeal, including any matter relating to the persons who are or may be required to give evidence as witnesses at the hearing; (6) any question relating to the summoning of witnesses (including whether a witness summons should be held to be of no effect); (7) any other question of law, or of the practice or procedure of the court, relevant to the proceedings on the appeal: see r 35(1).

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as

members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(A) The Summary Appeal Court under the Naval Discipline Act 1957/361. Hearing of appeals.

361. Hearing of appeals.

An appeal to the summary appeal court¹ against a finding is by way of a rehearing of the charge². An appeal which relates only to the punishment awarded must be by way of a rehearing in relation to the award of punishment³. Proceedings of the court are conducted in accordance with the law of England and Wales⁴, and the normal rules of criminal evidence generally apply, as for courts-martial⁵. Any matter relating to the practice or procedure of the court raised at the hearing of an appeal, to the extent that it is not provided by the Naval Discipline Act 1957 or the Summary Appeal Court (Navy) Rules 2000, must be determined by the judge advocate⁶ who must adopt such course as appears to him will best serve the interests of justice⁷. Rulings and directions on questions of law (including questions of procedure and practice) must be given by the judge advocate⁸, and any directions given by the judge advocate are binding on the court⁹.

Appeals must be heard in open court, except where the rules provide otherwise¹⁰. The person bringing the appeal has the right to be legally represented at a hearing before the court and may appoint a legal adviser to act for him in connection with the conduct of the proceedings on the appeal¹¹. A witness before the summary appeal court or any other person whose duty it is to attend on or before the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales¹².

Every member of the court, before first sitting as a member of the court, must be sworn in¹³. An appellant is entitled to object, on any reasonable grounds, to any member of the court hearing his appeal or any interpreter¹⁴. The judge advocate must confirm the basis of the appeal and deal with any legal issues which may arise at this stage¹⁵. He must then invite the appellant to plead guilty or not guilty to the charges¹⁶.

If the appeal is against a finding that a charge has been proved, the respondent and the appellant may each address the court once with respect to the case against the appellant on the charges being heard by the court¹⁷. The respondent may address the court immediately before adducing any evidence¹⁸, and the appellant may address the court immediately after the close of his case¹⁹ or, where there is more than one appellant, after the close of the case of each of the appellants²⁰. The respondent or appellant may with the leave of the court address it at any time during the hearing on any matter relating to the appeal or the charges which are being heard by the court²¹. At the close of the case for the respondent, the appellant may submit, in respect of any charge, that the respondent has failed to establish a case for him to answer²². After the close of the case for the appellant, the court must close to deliberate on its decision in relation to each finding²³.

If the appeal is against any punishment awarded, or if the court has the power to vary a punishment awarded, the respondent must provide the court with details of the appellant, his service, disciplinary and criminal records, and the summary punishment appealed against²⁴. Where on an appeal which relates only to the award of punishment there are disputed facts in the case, any issue of fact may be tried by the court²⁵. The appellant may give evidence on oath and call witnesses, produce to the court any document or written report, and address the court, on any matter relevant to the award of punishment²⁶. The court must close to deliberate on its decision on any punishment awarded²⁷. Any such decision, and the reasons for it, must be announced in open court by the member of the court presiding at the hearing of the appeal²⁸.

1 le under the Naval Discipline Act 1957 s 52FK (as added): see para 360 ante. As to the establishment and constitution of the summary appeal court see para 359 ante.

2 Ibid s 52FL(1) (s 52FL added by the Armed Forces Discipline Act 2000 s 19(2)).

3 Naval Discipline Act 1957 s 52FL(2) (as added: see note 2 supra).

4 Ibid s 52FL(4) (as added: see note 2 supra).

5 As to the admissibility of evidence see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, rr 27-28, Sch 3. As to the circumstances in which evidence can be given by live television link see r 29. As to the summoning of witnesses see r 30, Sch 4. As to the administration of oaths and affirmations to witnesses and other persons attending hearings of the court see r 31, Sch 5. As to specific evidence provisions with respect to appeals against findings see note 18 infra. As to evidence and procedures at courts-martial see para 448 et seq post. The Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, do not specify dress and correct forms of address at the summary appeal court. They are the same as for courts-martial with the exception that officers do not wear swords: see para 448 et seq post. The court has the discretion to relax the dress as appropriate. For further guidance as to dress and ceremonial see the Manual of Naval Law vol II Ch 23 Section IV (arts 2330-2331).

6 As to the appointment of judge advocates in relation to the summary appeal court see para 359 ante.

7 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 43.

8 Naval Discipline Act 1957 s 52FL(5) (as added: see note 2 supra).

9 Ibid s 52FL(6) (as added: see note 2 supra).

10 Ibid s 52FL(3) (as added: see note 2 supra). This is except in such cases as may be prescribed by rules under s 52FP (as added): see para 359 note 1 ante. As to the circumstances in which hearings before the court may be held in private see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 5.

11 See ibid r 6. For the qualifications that must be held by legal representatives see r 7. As to the administration of legal aid where an appellant appoints a civilian lawyer see para 456 post.

12 Naval Discipline Act 1957 s 52FR (added by the Armed Forces Discipline Act 2000 s 24(2)).

13 See the Naval Discipline Act 1957 s 52FQ (as added); the Administration of Oaths (Summary Appeal Court) (Navy) Order 2000, SI 2000/2376; and para 359 ante.

14 See the Summary Appeal Court (Naval) Rules 2000, SI 2000/2370, r 39. As to sittings and adjournments see r 38. As to the interruption of hearings where a member of the court is unable to continue see r 40. As to refixing of postponed and interrupted hearings see r 41. As to the procedure to be adopted where there is more than one appeal against a finding see r 42.

15 The Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, allow for legal issues to be resolved at a preliminary hearing (see para 360 ante) and are generally silent as to procedures to be followed at a substantive trial. However, the court is clearly able to deal with matters of law during the appeal: see the Naval Discipline Act 1957 s 52FL(5) (as added); and the text to note 8 supra. For further guidance on the order of procedure for the appeal hearing see the Manual of Naval Law vol II Ch 23 Section V (arts 2340-2342).

16 The Naval Discipline Act 1957 and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, do not contain any requirement that a plea be taken at appeal. It is submitted that they envisage that the court will rely on the appellant's original notice of appeal and any submissions from his legal adviser. However, the Royal Navy has adopted the practice that the appellant himself will be asked to confirm his plea on each charge.

17 See the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, rr 44, 46(1). The respondent may at any time during the hearing of an appeal against finding give notice that he no longer intends to contest the appeal; and, where he does so, the court must quash the finding: r 45.

As to the practice and procedure to be adopted where, in accordance with r 32 (see para 360 ante), the court is hearing appeals by more than one appellant at the same time see r 47.

18 See note 5 supra. See also the Manual of Naval Law vol II Ch 23 Section V (arts 2340-2342). As to additional evidence adduced during the hearing of the appeal see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 48. As to expert evidence adduced at the hearing of an appeal see r 49. As to exhibits admitted in evidence see r 50. As to the presence and examination of witnesses see rr 51-52. As to evidence in rebuttal see r 56.

19 Except with the leave of the judge advocate, if the appellant elects to give evidence, he must be called before any other witness for the appellant: *ibid* r 55.

20 See *ibid* r 46(2).

21 See *ibid* r 46(3). The court may not exercise its powers under the Naval Discipline Act 1957 s 52FM(1)(b) (as added) (see para 362 post) to substitute another finding without affording the appellant and the respondent an opportunity to address it on the exercise of those powers in the particular case: Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 46(4).

22 See *ibid* r 53. The court may at any time after the close of the case for the respondent find that a charge has not been proved, and where it so finds it must quash the finding that the charge has been proved made under the Naval Discipline Act 1957 s 52D (as added and amended) (see para 350 ante): Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 54(1). The court must give an opportunity to the respondent to address it before making such a finding: r 54(2).

23 See *ibid* r 57(1), (4). During its deliberation on any such finding, the court must not separate until the decision on the finding has been reached, unless the judge advocate directs that in the interests of justice the court may separate: r 57(2). The vote of each member of the court must be given orally; and the vote of each member of the court qualified for membership under the Naval Discipline Act 1957 s 52FH (as added) (see para 359 note 7 ante) or the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 23 must be given in reverse order of seniority and before the vote of the judge advocate: r 57(3).

24 See *ibid* rr 59-60.

25 *Ibid* r 61(1). Where an issue of fact is so tried the judge advocate may direct the respondent to call any witness to give evidence, and the respondent and the appellant may, with the leave of the judge advocate, adduce evidence: r 61(2). The court must sit in closed court while deliberating on its findings on the issue of fact: r 61(3). The decision of the court on the issue of fact, and the reasons for it, must be announced in open court by the judge advocate: r 61(4).

26 See *ibid* r 62.

27 *Ibid* r 63(1).

28 *Ibid* r 63(2).

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

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362. Findings of the summary appeal court.

On an appeal against a finding of guilt, the summary appeal court may¹ confirm or quash the finding², or in a case where the officer who conducted the summary trial³ could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved⁴.

Where the court quashes a finding⁵: (1) the court must quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed)⁶; and (2) the court may vary any punishment which relates both to that and one or more other findings so as to award any punishment which⁷ it would have been within the powers of the officer who conducted the summary trial to award⁸ and, in the opinion of the court, is no more severe than the punishment originally awarded⁹.

Where, on an appeal against a finding of guilt, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded at the summary trial so as to award any punishment which it would have been within the powers of the officer who conducted the summary trial to award and, in the opinion of the court, is no more severe than that originally awarded¹⁰.

On an appeal against the punishment awarded, the court may¹¹: (a) confirm the punishment awarded at the summary trial¹²; or (b) substitute any other punishment which¹³ it would have been within the powers of the officer who conducted the summary trial to award¹⁴ and, in the opinion of the court, is no more severe than that originally awarded¹⁵.

Any punishment awarded by the court has effect as if awarded on the day on which the original punishment was awarded on summary trial of the charge¹⁶, and any finding substituted or sentence awarded by the court must be treated for all purposes as having been awarded or made by the officer who conducted the summary trial¹⁷.

Any decision of the summary appeal court¹⁸ must be determined by a majority of the votes of the members of the court¹⁹.

1 Naval Discipline Act 1957 s 52FM(1) (s 52FM added by the Armed Forces Discipline Act 2000 s 20(2)). As to the establishment and constitution of the summary appeal court see para 359 ante.

2 Naval Discipline Act 1957 s 52FM(1)(a) (as added: see note 1 supra).

3 As to summary trial see para 350 ante.

4 Naval Discipline Act 1957 s 52FM(1)(b) (as added: see note 1 supra).

5 Ibid s 52FM(2) (as added: see note 1 supra).

6 Ibid s 52FM(2)(a) (as added: see note 1 supra).

7 Ibid s 52FM(2)(b) (as added: see note 1 supra).

8 Ibid s 52FM(2)(b)(i) (as added: see note 1 supra).

9 Ibid s 52FM(2)(b)(ii) (as added: see note 1 supra).

10 Ibid s 52FM(3) (as added: see note 1 supra).

- 11 Ibid s 52FM(4) (as added: see note 1 supra).
- 12 Ibid s 52FM(4)(a) (as added: see note 1 supra).
- 13 Ibid s 52FM(4)(b) (as added: see note 1 supra).
- 14 Ibid s 52FM(4)(b)(i) (as added: see note 1 supra).
- 15 Ibid s 52FM(4)(b)(ii) (as added: see note 1 supra).
- 16 Ibid s 52FM(5) (as added: see note 1 supra).
- 17 Ibid s 52FM(6) (as added: see note 1 supra).
- 18 Ie when constituted as mentioned in ibid s 52FJ(1) (as added): see para 359 ante.
- 19 Ibid s 52FN(1) (s 52FN added by the Armed Forces Discipline Act 2000 s 21(2)). The Naval Discipline Act 1957 s 52FN(1) (as added) is expressed to be subject to s 52FL(5) (as added): see para 361 ante.

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

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363. Record of the decision of the court on finding and the record of proceedings.

The decision of the summary appeal court¹ on each finding², and, except where the decision is to quash the finding, the reasons for it, must be announced separately in open court by the member of the court presiding at the hearing of the appeal³.

The decision of the court on any punishment awarded must be recorded in writing and dated and signed by the members of the court hearing the appeal⁴.

The court administration officer must notify the appellant's commanding officer and any other relevant parties of the result of the appeal, and ensure that in the event of a successful appeal the necessary administrative action is taken by the appellant's commanding officer or parent unit⁵. In the event that the punishment awarded by the court includes dismissal or detention, the punishment must then be implemented⁶.

The record of proceedings in relation to an appeal includes, where appropriate, the record of the decision of the summary appeal court on each finding, and the record of the decision of the court in respect of any punishment awarded⁷. The record of proceedings must be kept in the custody of the court administration officer for a period of six years after the conclusion of the hearing of the appeal⁸. An appellant is entitled to receive a copy of the record of proceedings on an application to the court administration officer within that period⁹, and on payment of a fee at such rate as the court administration officer may determine¹⁰.

1 As to the establishment and constitution of the summary appeal court see para 359 ante.

2 As to the findings of the summary appeal court see para 362 ante.

3 Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 58(1). The decision of the court on a finding, and the reasons for it, must be recorded in writing and dated and signed by the members of the court hearing the appeal: r 58(2). A copy of the decision is normally provided to the parties, the commanding officer, and if applicable, the officer who signed any punishment warrant and the reviewing authority.

4 Ibid r 63(3).

5 See the Manual of Naval Law vol II Ch 17.

6 See ibid vol II Ch 17.

7 Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 64(1). For further guidance on the record of proceedings see the Manual of Naval Law vol II Ch 26 Section II (arts 2609-2613).

8 Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 64(2).

9 Ie, in relation to an appellant, the period of six years after the conclusion of the hearing of the appeal: ibid r 64(4).

10 Ibid r 64(3).

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Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

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364. Appeals from decisions of the summary appeal court.

Although there is no appeal from a decision of the summary appeal court, the person who brought the appeal may question any judgment of the court on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the court to have a case stated for the opinion of the High Court in England and Wales¹. The application must state the grounds on which the decision of the court is questioned². The application must be made in writing and must be served on the applicant's commanding officer³ within 21 days after the date of the decision in respect of which the application is made⁴. The commanding officer must as soon as practicable serve it on the court administration officer⁵. After making the application, the applicant must as soon as practicable serve a copy of it on the prosecuting authority⁶. On receipt of the application, the court administration officer must as soon as practicable send it to the judge advocate⁷ who sat as a member of the court at the hearing to which the application relates⁸.

The function of the court in stating a case is exercised by the judge advocate sitting alone⁹. The judge advocate must inform the court administration officer as to whether or not he has decided to state a case and that officer must give notice in writing to the applicant of the judge advocate's decision¹⁰. If the judge advocate considers that the application is frivolous, he may refuse to state a case and must in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him¹¹. If the judge advocate decides to state a case¹², the applicant must, within 21 days of receiving the notice¹³, draft a case and serve a copy of it on the court administration officer and the prosecuting authority¹⁴. The prosecuting authority must, within 21 days of receiving a copy of the draft case, either¹⁵: (1) give notice in writing to the applicant and the court administration officer that he does not intend to take part in the proceedings before the High Court¹⁶; or (2) indicate in writing on the copy of the draft case that he agrees with it and send the copy to the court administration officer¹⁷; or (3) draft an alternative case and serve it, together with a copy of the applicant's case, on the court administration officer¹⁸. The judge advocate must consider the applicant's draft case and any alternative draft case served on the court administration officer in accordance with head (3) above¹⁹ and must state and sign a case within 14 days after either²⁰: (a) the date on which he receives all the documents required to be served on the court administration officer under heads (1) to (3) above²¹; or (b) the expiration of the period of 21 days from receipt of a copy of the draft case²², whichever is the sooner²³. Any time limit referred to above²⁴ may be extended by the judge advocate either before or after it expires²⁵.

A case stated by the court must state the facts found by the court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the court in respect of which the application is made and the question on which the opinion of the High Court is sought²⁶.

If the judge advocate decides not to state a case but the stating of a case is subsequently required by the High Court by mandatory order²⁷, then the same procedure²⁸ applies to the stating of the case except that the period for drafting a case runs from the day on which the mandatory order was made²⁹.

1 Naval Discipline Act 1957 s 52FN(2) (s 52FN added by the Armed Forces Discipline Act 2000 s 21(2)). For further guidance on stating a case see the Manual of Naval Law vol I Ch 11 Section III (art 1115). As to the establishment and constitution of the summary appeal court see para 359 ante.

- 2 Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 65(2).
- 3 For the meaning of 'commanding officer' see para 348 note 2 ante.
- 4 Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 65(1).
- 5 Ibid r 65(3).
- 6 Ibid r 65(4). As to the prosecuting authority see para 316 ante.
- 7 As to the appointment of judge advocates in relation to the summary appeal court see para 359 ante.
- 8 Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 65(5).
- 9 Ibid r 66(5).
- 10 Ibid r 65(6).
- 11 Ibid r 65(7).
- 12 See ibid r 66(1).
- 13 Ie referred to in ibid r 65(6): see the text to note 10 supra.
- 14 Ibid r 66(2).
- 15 Ibid r 66(3).
- 16 Ibid r 66(3)(a).
- 17 Ibid r 66(3)(b).
- 18 Ibid r 66(3)(c).
- 19 Ibid r 66(4).
- 20 Ibid r 66(6).
- 21 Ibid r 66(6)(a).
- 22 Ibid r 66(6)(b).
- 23 Ibid r 66(6).
- 24 Ie referred to in ibid rr 65, 66: see the text and notes 2-23 supra.
- 25 See ibid r 67(2).
- 26 Ibid r 67(1).
- 27 Mandatory orders were formerly termed 'orders of mandamus': see CPR 54.1(2)(b); and JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.
- 28 Ie the procedure under the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 66: see the text and notes 12-23 supra.
- 29 See ibid r 67(3).

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359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary

Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

364 Appeals from decisions of the summary appeal court

NOTE 27--CPR 54.1(2)(b) revoked: SI 2003/3361.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(B) The Summary Appeal Court under Military and Air Force Law/365. Establishment and constitution of the summary appeal court.

(B) THE SUMMARY APPEAL COURT UNDER MILITARY AND AIR FORCE LAW

365. Establishment and constitution of the summary appeal court.

The summary appeal court was established, and its procedure is governed, by the Army Act 1955 and the Air Force Act 1955¹. The purpose of the summary appeal court is to hear appeals against findings recorded and punishments awarded by commanding officers² and appropriate superior authorities³ on dealing summarily⁴ with charges⁵.

The court consists of judge advocates appointed by the Judge Advocate General⁶, and officers qualified⁷ to be members of the court⁸. The court may sit in two or more divisions, and may sit in any place, whether within or outside the United Kingdom⁹. There is a court administration officer for the court, who is an officer, or other person, appointed by the Defence Council¹⁰. The court sits at such times and in such places as may be determined by the court administration officer¹¹. The court administration officer performs such other functions as may be prescribed by rules¹².

For the purpose of hearing an appeal, the summary appeal court must consist of one of the appointed judge advocates¹³ and two officers qualified¹⁴ for membership of the court¹⁵. The judge advocate for any appeal must be specified by or on behalf of the Judge Advocate General¹⁶, and the other members of the court for any appeal must be specified by or on behalf of the court administration officer¹⁷. The court administration officer may appoint court officials as appropriate¹⁸.

Every member of the court must, before first sitting as a member of the court, have administered to him by the prescribed person¹⁹ in the prescribed manner an oath in the prescribed form²⁰.

1 See the Army Act 1955 s 83ZA(1) (s 83ZA added by the Armed Forces Discipline Act 2000 s 14(1)); and the Air Force Act 1955 s 83ZA(1) (s 83ZA added by the Armed Forces Discipline Act 2000 s 14(1)). The Secretary of State may make rules for the purpose of regulating the practice and procedure to be followed in the summary appeal court: see the Army Act 1955 s 83ZJ (added by the Armed Forces Discipline Act 2000 s 22(1)); and the Air Force Act 1955 s 83ZJ (added by the Armed Forces Discipline Act 2000 s 22(1)). In exercise of this power, the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, have been made. As to the Secretary of State see para 2 ante.

2 For the meaning of 'commanding officer' see para 353 note 4 ante.

3 For the meaning of 'appropriate superior authority' see para 354 note 8 ante.

4 As to references to dealing summarily with a charge see para 356 note 1 ante.

5 Army Act 1955 s 83ZA(1) (as added: see note 1 supra); Air Force Act 1955 s 83ZA(1) (as added: see note 1 supra). Proceedings of the summary appeal court are conducted in accordance with the law of England and Wales: see the Army Act 1955 s 83ZF(4) (s 83ZF added by the Armed Forces Discipline Act 2000 s 19(1)); the Air Force Act 1955 s 83ZF(4) (s 83ZF added by the Armed Forces Discipline Act 2000 s 19(1)); the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27; the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27; and para 367 post.

6 Army Act 1955 s 83ZA(2)(a) (as added: see note 1 supra), s 83ZB(1) (s 83ZB added by the Armed Forces Discipline Act 2000 s 15(1)); Air Force Act 1955 s 83ZA(2)(a) (as added: see note 1 supra), s 83ZB(1) (s 83ZB

added by the Armed Forces Discipline Act 2000 s 15(1)). As to the Judge Advocate General see paras 446-447 post.

No person may be appointed under these provisions unless he is qualified under the Army Act 1955 s 84B(2) (as added) or the Air Force Act 1955 s 84B(2) (as added) (see para 484 post) for appointment as the judge advocate in relation to a court-martial: Army Act 1955 s 83ZB(2) (as so added); Air Force Act 1955 s 83ZB(2) (as so added). As to military and air force courts-martial see para 480 et seq post.

7 An officer is qualified for membership of the summary appeal court if he is, in the case of the Army Act 1955, a military officer or, in the case of the Air Force Act 1955, an air force officer, who has held a commission in any of Her Majesty's naval, military, or air forces for a period of not less than two years or periods amounting in the aggregate to not less than two years: Army Act 1955 s 83ZC(1) (s 83ZC added by the Armed Forces Discipline Act 2000 s 16(1)); Air Force Act 1955 s 83ZC(1) (s 83ZC added by the Armed Forces Discipline Act 2000 s 16(2)). Rules under the Army Act 1955 s 83ZJ (as added) or the Air Force Act 1955 s 83ZJ (as added) (see para 365 ante) may specify circumstances in which, in the case of the Army Act 1955, any other military officer or a naval or air force officer, or, in the case of the Air Force Act 1955, any other air force officer or a naval or military officer, is qualified for membership of the court: Army Act 1955 s 83ZC(2) (as so added); Air Force Act 1955 s 83ZC(2) (as so added); and see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 23, 24; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 23, 24. 'Military officer' means an officer belonging to Her Majesty's military forces and subject to military law: Army Act 1955 s 83ZC(4) (as so added); Air Force Act 1955 s 83ZC(4) (as so added). 'Air force officer' means an officer belonging to Her Majesty's air forces and subject to air force law: Army Act 1955 s 83ZC(4) (as so added); Air Force Act 1955 s 83ZC(4) (as so added). 'Naval officer' means an officer belonging to Her Majesty's naval forces and subject to the Naval Discipline Act 1957: Army Act 1955 s 83ZC(4) (as so added); Air Force Act 1955 s 83ZC(4) (as so added). As to the persons subject to naval discipline, military or air force law see para 306 et seq ante.

The following persons are not qualified for membership of the court:

- 95 (1) the court administration officer (Army Act 1955 s 83ZC(3)(a) (as so added); Air Force Act 1955 s 83ZC(3)(a) (as so added));
- 96 (2) an officer under the command of the court administration officer (Army Act 1955 s 83ZC(3)(b) (as so added); Air Force Act 1955 s 83ZC(3)(b) (as so added));
- 97 (3) the prosecuting authority (see para 315 ante) (Army Act 1955 s 83ZC(3)(c) (as so added); Air Force Act 1955 s 83ZC(3)(c) (as so added));
- 98 (4) any person who has a general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742) (Army Act 1955 s 83ZC(3)(d) (as so added); Air Force Act 1955 s 83ZC(3)(d) (as so added));
- 99 (5) an advocate in Scotland or a solicitor who has a right of audience in the Court of Session or the High Court of Justiciary (Army Act 1955 s 83ZC(3)(e) (as so added); Air Force Act 1955 s 83ZC(3)(e) (as so added));
- 100 (6) a member of the Bar of Northern Ireland (Army Act 1955 s 83ZC(3)(f) (as so added); Air Force Act 1955 s 83ZC(3)(f) (as so added));
- 101 (7) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules (Army Act 1955 s 83ZC(3)(g) (as so added); Air Force Act 1955 s 83ZC(3)(g) (as so added)); or
- 102 (8) any person who is, or has at any time during the preceding five years been, a provost officer (Army Act 1955 s 83ZC(3)(h) (as so added); Air Force Act 1955 s 83ZC(3)(h) (as so added)).

As to the meaning of 'Commonwealth country' see para 20 note 6 ante. For the meaning of 'provost officer' see para 403 note 3 post.

Where the summary appeal court hears an appeal brought by any such civilian as is mentioned in the Army Act 1955 s 209(1) or s 209(2) (as amended; prospectively further amended) or the Air Force Act 1955 s 209(1) or s 209(2) (as amended; prospectively further amended) (see para 311 ante), as the case may be, and the court would otherwise include two officers qualified under the Army Act 1955 s 83ZC (as added) or the Air Force Act 1955 s 83ZC (as added), as the case may be, for membership of the court, the court may include in place of either or both of them a corresponding number of persons who are in the service of the Crown and are civilians such as are mentioned in the Army Act 1955 s 209(1) or s 209(2) (as amended; prospectively further amended) or the Air Force Act 1955 s 209(1) or s 209(2) (as amended; prospectively further amended), as the case may be: see the Army Act 1955 s 209(3)(fab), (fac) (added by the Armed Forces Discipline Act 2000 s 25, Sch 3 para

17); and the Air Force Act 1955 s 209(3)(fab), (fac) (added by the Armed Forces Discipline Act 2000 Sch 3 para 17).

8 Army Act 1955 s 83ZA(2)(b) (as added: see note 1 supra); Air Force Act 1955 s 83ZA(2)(b) (as added: see note 1 supra).

9 Army Act 1955 s 83ZA(3) (as added: see note 1 supra); Air Force Act 1955 s 83ZA(3) (as added: see note 1 supra). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

10 Army Act 1955 s 83ZA(4) (as added: see note 1 supra); Air Force Act 1955 s 83ZA(4) (as added: see note 1 supra). As to the Defence Council see para 2 ante.

11 Army Act 1955 s 83ZA(5) (as added: see note 1 supra); Air Force Act 1955 s 83ZA(5) (as added: see note 1 supra). As to notification by the court administration officer of the time and place for the hearing of an appeal see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 22; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 22.

12 Army Act 1955 s 83ZA(6) (as added: see note 1 supra); Air Force Act 1955 s 83ZA(6) (as added: see note 1 supra). The text refers to rules made under the Army Act 1955 s 83ZJ (as added) or the Air Force Act 1955 s 83ZJ (as added): see para 365 ante.

The court administration officer for the summary appeal court in respect of each service runs these courts in consultation with the Office of the Judge Advocate General or the Office of the Deputy Judge Advocate General, which are responsible for providing a judge advocate who will preside at the hearing.

13 le the judge advocates appointed under the Army Act 1955 s 83ZB (as added) or the Air Force Act 1955 s 83ZB (as added), as the case may be: see the text and note 6 supra.

14 le under the Army Act 1955 s 83ZC (as added) or the Air Force Act 1955 s 83ZC (as added), as the case may be: see note 7 supra.

15 Army Act 1955 s 83ZD(1) (s 83ZD added by the Armed Forces Discipline Act 2000 s 17(1)); Air Force Act 1955 s 83ZD(1) (s 83ZD added by the Armed Forces Discipline Act 2000 s 17(1)). The Army Act 1955 s 83ZD(1) (as added) and the Air Force Act 1955 s 83ZD(1) (as added) have effect subject to any provision made by virtue of the Army Act 1955 s 83ZJ (as added) or the Air Force Act 1955 s 83ZJ (as added) (see para 365 ante), as the case may be: Army Act 1955 s 83ZD(2) (as so added); Air Force Act 1955 s 83ZD(2) (as so added).

16 Army Act 1955 s 83ZD(3) (as added: see note 15 supra); Air Force Act 1955 s 83ZD(3) (as added: see note 15 supra).

17 Army Act 1955 s 83ZD(4) (as added: see note 15 supra); Air Force Act 1955 s 83ZD(4) (as added: see note 15 supra). The court administration officer must specify a reserve member of the court ('a waiting member'): see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 25; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 25.

18 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 26; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 26. The court officials that may be appointed are the court recorder and the interpreter: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 26; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 26.

19 'Prescribed' means prescribed by the Secretary of State by order made by statutory instrument: Army Act 1955 s 83ZK(2) (s 83ZK added by the Armed Forces Discipline Act 2000 s 23(1)); Air Force Act 1955 s 83ZK(2) (s 83ZK added by the Armed Forces Discipline Act 2000 s 23(1)). Such an order is subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 s 83ZK(3) (as so added); Air Force Act 1955 s 83ZK(3) (as so added). As to the prescribed person see the Administration of Oaths (Summary Appeal Court) (Army) Order 2000, SI 2000/2377, art 2; and the Administration of Oaths (Summary Appeal Court) (Air Force) Order 2000, SI 2000/2378, art 2.

20 Army Act 1955 s 83ZK(1) (as added: see note 19 supra); Air Force Act 1955 s 83ZK(1) (as added: see note 19 supra). As to the prescribed form and manner of administration of oaths see the Administration of Oaths (Summary Appeal Court) (Army) Order 2000, SI 2000/2377, art 2(1), Schedule; and the Administration of Oaths (Summary Appeal Court) (Air Force) Order 2000, SI 2000/2378, art 2(1), Schedule.

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(B) The Summary Appeal Court under Military and Air Force Law/366. Right of appeal and pre-trial procedures.

366. Right of appeal and pre-trial procedures.

Any person in respect of whom a charge has been dealt with summarily¹, and a finding that the charge has been proved has been recorded, may appeal to the summary appeal court² against the finding or against any punishment awarded or against both³. Any appeal must be brought within the period of 14 days beginning with the date on which the punishment was awarded ('the initial period') or within such longer period as the court may (before the end of the initial period) allow⁴. The court may at any later time give leave for an appeal to be brought⁵. A person may apply to extend the period of time for bringing an appeal and for leave to bring an appeal out of time by serving on his commanding officer notice of an application⁶. The powers of the court to determine such an application are exercised by a judge advocate sitting alone⁷, and an application is determined without a hearing unless the applicant requests a hearing or the judge advocate directs that a hearing should take place⁸.

A person may bring an appeal by serving on his commanding officer a notice of appeal⁹. The commanding officer must as soon as reasonably practicable forward the notice of appeal to the court administration officer, and serve a copy of it on the prosecuting authority together with supporting documentation¹⁰.

The authority carrying out a review of a summary finding or punishment award may, with the leave of the summary appeal court, refer the finding or any punishment awarded, or both, to the court to be considered or reconsidered by it as on an appeal¹¹.

A person may abandon an appeal, whether wholly or in part, at any time prior to its determination¹².

The prosecuting authority is the respondent on any appeal¹³ and as such it must give notice in writing to the court administration officer indicating whether or not he intends to contest an appeal against finding¹⁴. At any time prior to the hearing of the appeal, the respondent may give notice that he no longer intends to contest it¹⁵. Where the respondent gives notice that he does not intend to contest an appeal, the court must quash the finding against which the appeal is brought¹⁶. Where the respondent gives notice that he intends to contest an appeal against finding, he must serve papers (including a copy of the record of summary dealing and copies of documentary evidence) on the appellant's commanding officer and the court administration officer¹⁷.

Where the respondent does not intend to call as a witness any person whose statement has been served on the appellant as part of the evidence for the respondent, or any person in respect of whose evidence he has served notice¹⁸, the respondent must (unless the appellant waives the requirement) serve notice in writing on the appellant that he does not intend to call that person, or tender that person at the hearing of the appeal for cross-examination by the appellant¹⁹.

Where the appeal relates only to any punishment awarded, the respondent must serve on the appellant's commanding officer a statement of the information which the respondent proposes to present to the court²⁰ and a copy of the record of summary dealing²¹. On receipt of the documents, the appellant's commanding officer must as soon as reasonably practicable serve them on the appellant²². On receipt of the statement, the appellant must as soon as reasonably practicable give notice in writing to the respondent of any fact or matter contained in the statement on which he takes issue with the respondent²³.

The court may decide to hear two or more appeals at the same time where it appears to be in the interests of justice to do so²⁴.

The court may direct the court administration officer to convene a preliminary hearing prior to the commencement of the hearing of the appeal either of its own motion or on the application of the appellant or the respondent²⁵. A preliminary hearing takes place before the judge advocate in chambers²⁶, and allows any matter relating to or affecting the hearing of the appeal to be considered prior to the hearing of the appeal²⁷.

1 As to references to dealing summarily with a charge see para 356 note 1 ante.

2 As to the establishment and constitution of the summary appeal court see para 365 ante.

3 Army Act 1955 s 83ZE(1) (s 83ZE added by the Armed Forces Discipline Act 2000 s 18(1)); Air Force Act 1955 s 83ZE(1) (s 83ZE added by the Armed Forces Discipline Act 2000 s 18(1)).

4 Army Act 1955 s 83ZE(2) (as added: see note 3 supra); Air Force Act 1955 s 83ZE(2) (as added: see note 3 supra).

5 Army Act 1955 s 83ZE(3) (as added: see note 3 supra); Air Force Act 1955 s 83ZE(3) (as added: see note 3 supra).

6 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 9; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 9. As to the form in which notice of application must be given see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 9(2), Sch 2; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 9(2), Sch 2. As to the service of documents see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 3-4, Sch 1; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 3-4, Sch 1.

7 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 10(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 10(1).

8 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 10(1), (2); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 10(1), (2). Where the judge advocate is minded to refuse an application without a hearing, the court administration officer must give notice in writing of that fact to the applicant: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 10(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 10(3). On receipt of such a notice, the applicant may request a hearing of the application by giving notice in writing to the court administration officer before the end of the period of 14 days beginning with the date of the notice: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 10(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 10(4). Where there is a requirement for a hearing, the court administration officer must determine the time and place of the hearing, and serve notice of those matters on the applicant and the prosecuting authority: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 10(5); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 10(5). As to the prosecuting authority see para 315 ante. If, having notified a person, the court administration officer changes the time or place of the hearing, he must notify the person of the change: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 10(6); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 10(6).

The judge advocate must give notice in writing of his decision on an application to the court administration officer who must serve a copy of it on the applicant, the applicant's commanding officer and the prosecuting authority: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 11(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 11(1). Where the judge advocate refuses an application, he must set out in writing his reasons for doing so, and those reasons must be included in the notice so given: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 11(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 11(2).

9 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 8(1), (2); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 8(1), (2). As to the form in which notice of appeal must be given see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 8, Sch 2; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 8, Sch 2.

10 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 8(3); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 8(3). The supporting documentation referred to in the text consists of: (1) the record of summary dealing; (2) a list of persons whose evidence was not adduced in the proceedings on summary dealing but who appear to the commanding officer to be potential witnesses in the proceedings before the court; (3) any material in the possession of the commanding officer which is not annexed to or referred to in the record of summary dealing but which in his opinion may be material to the proceedings before the court; (4) copies of any conduct sheets of the appellant; and (5) a document specifying the appellant's age

and, where applicable, his rank, service record and any recognised acts of gallantry: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 8(3), (4); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 8(3), (4).

11 See the Army Act 1955 s 115(5A)-(5E) (as added); the Air Force Act 1955 s 115(5A)-(5E) (as added); and para 358 ante. As to the practice and procedure to be followed in determining an application for leave see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 12, 13; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 12, 13. As to hearings of applications see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 14; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 14.

12 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 15; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 15.

13 See the Army Act 1955 s 83ZE(4) (as added: see note 3 supra); and the Air Force Act 1955 s 83ZE(4) (as added: see note 3 supra).

14 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 16(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 16(1).

15 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 16(2); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 16(2).

16 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 17; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 17.

17 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 18; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 18. As to the service of additional evidence prior to the hearing of an appeal see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 19; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 19.

18 Ie under the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 48 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 48, as the case may be: see para 367 post.

19 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 20; Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 20.

20 Ie in pursuance of the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60, as the case may be: see para 367 post.

21 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 21(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 21(1).

22 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 21(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 21(2).

23 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 21(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 21(3).

24 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 32; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 32.

25 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 33-34; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 33-34.

26 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 36; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 36. As to the presence of persons at preliminary hearings by live television link see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 37; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 37.

27 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 35; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 35. Such matters include: (1) any question as to the admissibility of evidence; (2) any question as to the jurisdiction of the court in relation to any issue raised on the appeal; (3) any question as to whether the whole or any part of the hearing of the appeal should not be held in open court; (4) any question as to the exercise by the court of its power to hear more than one appeal at the same time (ie its power under the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 32 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 32, as the case may be: see the text to note 24 supra); (5) any matter relating to the evidence to be given at the hearing of the appeal, including any matter relating to the persons who are or may be required to give evidence as witnesses at the hearing; (6) any question relating to

the summoning of witnesses (including whether a witness summons should be held to be of no effect); (7) any other question of law, or of the practice or procedure of the court, relevant to the proceedings on the appeal: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 35(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 35(1).

UPDATE

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Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(B) The Summary Appeal Court under Military and Air Force Law/367. Hearing of appeals.

367. Hearing of appeals.

An appeal to the summary appeal court¹ against a finding is by way of a rehearing of the charge². An appeal which relates only to the punishment awarded is by way of a rehearing in relation to the award of punishment³. Proceedings of the summary appeal court are conducted in accordance with the law of England and Wales⁴. Any matter relating to the practice or procedure of the court raised at the hearing of an appeal, to the extent that it is not provided by the Army Act 1955, the Air Force Act 1955, the Summary Appeal Court (Army) Rules 2000 or the Summary Appeal Court (Air Force) Rules 2000, as the case may be, must be determined by the judge advocate⁵ who must adopt such course as appears to him will best serve the interests of justice⁶. Rulings and directions on questions of law (including questions of procedure and practice) must be given by the judge advocate⁷, and any directions given by the judge advocate are binding on the court⁸.

Appeals must be heard in open court, except where the rules provide otherwise⁹. The person bringing the appeal has the right to be legally represented at a hearing before the court (including a preliminary hearing) and may appoint a legal adviser¹⁰ to act for him in connection with the conduct of the proceedings on the appeal¹¹. The appellant's commanding officer must secure that the appellant is afforded reasonable opportunity of communicating with his legal adviser for the purposes of preparing his case on the appeal¹². Any right conferred or duty imposed by the rules on the appellant may be exercised or, as the case may be, performed by his legal adviser on his behalf¹³, provided the legal adviser serves notice on the court administration officer specifying his name and address, the name and, where applicable, the rank, service number and regiment or corps or unit (as the case may be) of the person in respect of whom he is acting, and the proceedings before the court in connection with which he has been appointed¹⁴. Where the appellant revokes his legal adviser's appointment, he must as soon as reasonably practicable serve notice on the court administration officer and his commanding officer of that fact¹⁵.

A witness before the summary appeal court or any other person whose duty it is to attend on or before the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales¹⁶.

Every member of the court, before first sitting as a member of the court, must be sworn in¹⁷. An appellant is entitled to object, on any reasonable grounds, to any member of the court hearing his appeal or any interpreter¹⁸.

If the appeal is against a finding that a charge has been proved, the respondent and the appellant may each address the court once with respect to the case against the appellant on the charges being heard by the court¹⁹. The respondent may address the court immediately before adducing any evidence²⁰, and the appellant may address the court immediately after the close of his case²¹ or, where there is more than one appellant, after the close of the case of each of the appellants²². The respondent or appellant may with the leave of the court address it at any time during the hearing on any matter relating to the appeal or the charges which are being heard by the court²³. Expert evidence may not be adduced at the hearing of an appeal without the leave of the judge advocate, unless the party proposing to rely on it has served on the other party to the appeal a statement setting out the substance of the expert evidence not less than 14 days before the date on which the hearing has been fixed to begin²⁴. Except where the person is the appellant, or is present to give expert evidence or evidence as to a person's

character, a person who is to be called to give evidence must not, except by leave of the judge advocate, be present at the hearing of an appeal against a finding until he is called to give evidence and examined²⁵. If, while a witness is under examination, a question arises as to the admissibility of a question put to him or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined²⁶. The judge advocate may direct any person, who is to give expert evidence or evidence as to a person's character, to withdraw from the court if he considers that the person's presence is undesirable in the interests of justice²⁷. The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and there is no injustice in doing so²⁸. The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court²⁹. If, in the opinion of the judge advocate, it is in the interests of justice to do so, the court may at any time call any witness whom it has not already heard, recall a witness and permit the appellant or the respondent to recall a witness³⁰. At the close of the case for the respondent, the appellant may submit, in respect of any charge, that the respondent has failed to establish a case for him to answer³¹. Any issue raised on such a submission must be determined by the judge advocate who must give such directions to the court as he thinks fit³². The court may, at any time after the close of the case for the respondent, find that a charge has not been proved, and where it so finds it must quash the finding that the charge has been proved³³. Except with the leave of the judge advocate, if the appellant elects to give evidence, he must be called before any other witnesses for the appellant³⁴. With the leave of the judge advocate, the respondent may call or recall a witness to give evidence on any matter raised by the appellant in relation to a charge which the respondent could not properly have dealt with before the appellant disclosed his case, or could not reasonably have foreseen³⁵. After the close of the case for the appellant, the court must close to deliberate on its decision in relation to each finding³⁶. During its deliberation on any such finding, the court must not separate until the decision on the finding has been reached, unless the judge advocate directs that in the interests of justice the court may separate³⁷. The vote of each member of the court must be given orally, and the vote of each member of the court qualified for membership³⁸ must be given in reverse order of seniority and before the vote of the judge advocate³⁹.

If the appeal is against any punishment awarded, or if the court has the power to vary a punishment awarded⁴⁰, the respondent must provide the court with information concerning⁴¹:

- 307 (1) any punishment awarded on summary dealing against which an appeal is brought⁴²;
- 308 (2) where the appeal is only against finding, an punishment awarded in respect of that finding⁴³;
- 309 (3) where any punishment referred to in heads (1) and (2) above relates to any finding which is not the subject of an appeal, the particulars of the offence to which the finding relates⁴⁴; and
- 310 (4) such other matters as appear to the respondent to be relevant to the exercise by the court of its powers⁴⁵.

Where on an appeal which relates only to the award of punishment there are disputed facts in the case, any issue of fact may be tried by the court⁴⁶. Where an issue of fact is so tried the judge advocate may direct the respondent to call any witness to give evidence and the respondent and the appellant may, with the leave of the judge advocate, adduce evidence⁴⁷. The court must sit in closed court while deliberating on its findings on the issue of fact⁴⁸, but the decision of the court on the issue of fact, and the reasons for it, must be announced in open court by the judge advocate⁴⁹. The appellant may give evidence on oath and call witnesses, produce to the court any document or written report, and address the court on any matter relevant to the award of punishment⁵⁰. Unless the respondent requires otherwise, any such

document or report need not be adduced in compliance with the strict rules of evidence⁵¹. The court must close to deliberate on its decision on any punishment awarded⁵². Any such decision, and the reasons for it, must be announced in open court by the judge advocate⁵³, and the decision of the court must be recorded in writing and dated and signed by the members of the court hearing the appeal⁵⁴.

1 le under the Army Act 1955 s 83ZE (as added) or the Air Force Act 1955 s 83ZE (as added), as the case may be: see para 366 ante.

2 Army Act 1955 s 83ZF(1) (added by the Armed Forces Discipline Act 2000 s 19(1)); Air Force Act 1955 s 83ZF(1) (added by the Armed Forces Discipline Act 2000 s 19(1)). A summary appeal court hearing is similar to an appeal to the Crown Court from the magistrates' court: see MAGISTRATES vol 29(2) (Reissue) paras 882-883.

3 Army Act 1955 s 83ZF(2) (as added: see note 2 supra); Air Force Act 1955 s 83ZF(2) (as added: see note 2 supra).

4 Army Act 1955 s 83ZF(4) (as added: see note 2 supra); Air Force Act 1955 s 83ZF(4) (as added: see note 2 supra). The modifications necessary to the rules of evidence which apply at courts-martial also apply at a hearing before the summary appeal court: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27, Sch 3; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27, Sch 3. As to the admission of facts or matters contained in the respondent's papers see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 28; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 28. As to the circumstances in which evidence can be given by live television link see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 29; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 29. As to the summoning of witnesses see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 30, Sch 4; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 30, Sch 4. As to the administration of oaths and affirmations to witnesses and other persons attending hearings of the court see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 31, Sch 5; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 31, Sch 5. As to specific evidence provisions with respect to appeals against findings see the text and notes 24-30, 34-35 infra.

5 As to the appointment of judge advocates in relation to the summary appeal court see para 365 ante.

6 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 43; Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 43.

7 Army Act 1955 s 83ZF(5) (as added: see note 2 supra); Air Force Act 1955 s 83ZF(5) (as added: see note 2 supra).

8 Army Act 1955 s 83ZF(6) (as added: see note 2 supra); Air Force Act 1955 s 83ZF(6) (as added: see note 2 supra).

9 Army Act 1955 s 83ZF(3) (as added: see note 2 supra); Air Force Act 1955 s 83ZF(3) (as added: see note 2 supra). This is except in such cases as may be prescribed by rules under the Army Act 1955 s 83ZJ (as added) or the Air Force Act 1955 s 83ZJ (as added), as the case may be: see para 365 ante. The rules provide that the court may sit in private for the whole or any part of a hearing where the court considers that: (1) it is necessary to do so in the interest of morals or public order; (2) it is necessary to do so for the purpose of safeguarding the interests of persons under the age of 18 years or protecting the private life of the appellant; or (3) the interests of justice would be prejudiced by the hearing, or that part of it taking place in public: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 5(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 5(1). The court may order that, subject to any exceptions the court may specify, the public is to be excluded from all or any part of a hearing if it appears to the court that it would be against the interests of national security to allow any evidence to be given or statement to be made in public in the course of the hearing or, as the case may be, that part of it: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 5(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 5(2). The court may sit in closed court when the members of the court hearing an appeal are deliberating on any matter raised on that appeal: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 5(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 5(3). Where the court sits in closed court to deliberate, no person may be present other than the members of the court, except any person under instruction who is permitted to be present by the members of the court hearing the appeal: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 5(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 5(4). It is the duty of the judge advocate to ensure that, where any person under instruction is permitted to be present when the members of the court are deliberating on any matter in closed court, that person takes no part in the deliberations and expresses no opinion to the members of the court: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 5(5); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 5(5).

10 For the qualifications that must be held by legal representatives see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 7; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 7.

11 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 6(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 6(1). An officer may not conduct the appellant's case, although an officer may be there to assist him if he is unrepresented. Legal aid may be applied for through the army or air force non-statutory legal aid schemes.

12 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 6(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 6(2).

13 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 6(3); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 6(3).

14 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 6(4); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 6(4).

15 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 6(5); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 6(5).

16 Army Act 1955 s 83ZL (added by the Armed Forces Discipline Act 2000 s 24(1)); Air Force Act 1955 s 83ZL (added by the Armed Forces Discipline Act 2000 s 24(1)).

17 See the Army Act 1955 s 83ZK (as added); the Air Force Act 1955 s 83ZK (as added); and para 365 ante.

18 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 39; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 39. As to sittings and adjournments see r 38. As to the interruption of hearings where a member of the court is unable to continue see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 40; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 40. As to refixing of postponed and interrupted hearings see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 41; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 41. As to the procedure to be adopted where there is more than one appeal against a finding see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 42; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 42.

19 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 44, 46(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 44, 46(1). The respondent may at any time during the hearing of an appeal against finding give notice that he no longer intends to contest the appeal; and, where he does so, the court must quash the finding: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 45; Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 45.

As to the practice and procedure to be adopted where, in accordance with the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 32 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 32 (see para 360 ante), as the case may be, the court is hearing appeals by more than one appellant at the same time see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 47; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 47.

20 As to additional evidence adduced during the hearing of the appeal see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 48; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 48. As to the examination of witnesses see the text to notes 28-30 infra.

21 See the text to note 34 infra.

22 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 46(2); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 46(2).

23 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 46(3); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 46(3). The court may not exercise its powers under the Army Act 1955 s 83ZG(1)(b) (as added) or the Air Force Act 1955 s 83ZG(1)(b) (as added) (see para 368 post), as the case may be, to substitute another finding without affording the appellant and the respondent an opportunity to address it on the exercise of those powers in the particular case: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 46(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 46(4).

24 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 49; Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 49.

25 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 51(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 51(1).

26 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 51(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 51(2).

27 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 51(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 51(3).

28 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 52(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 52(1).

29 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 52(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 52(2).

30 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 52(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 52(3).

31 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 53(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 53(1). Where such a submission is made, the respondent must be given the opportunity to address the court on the submission: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 53(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 53(2).

32 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 53(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 53(3).

33 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 54(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 54(1). The court must give an opportunity to the respondent to address it before making such a finding: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 54(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 54(2).

34 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 55; Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 55.

35 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 56; Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 56.

36 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 57(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 57(1). For the purposes of the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 57(1), 58 and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 57(1), 58, the reference to each finding is to each finding under the Army Act 1955 s 76B (as added and amended) or the Air Force Act 1955 s 76B (as added and amended) (see para 356 ante), as the case may be, to which the charges heard by the court relate: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 57(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 57(4).

37 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 57(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 57(2).

38 Ie under the Army Act 1955 s 83ZC (as added), the Air Force Act 1955 s 83ZC (as added), the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 23, or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 23, as the case may be: see para 365 ante.

39 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 57(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 57(3).

40 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 59; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 59.

41 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(1).

42 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(1)(a); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(1)(a).

43 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(1)(b); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(1)(b).

44 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(1)(c); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(1)(c).

45 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(1)(d); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(1)(d). The text refers to the powers of the court under the Army Act 1955 s 83ZG(2) (as added), s 83ZG(3) (as added) or s 83ZG(4) (as added), or the Air Force Act 1955 s 83ZG(2) (as added), s 83ZG(3) (as added) or s 83ZG(4) (as added), as the case may be: see para 368 post.

The information referred to in head (4) in the text must, as far as practicable, include information concerning: (1) the appellant's age and rank; (2) his service record; (3) any recognised acts of gallantry; (4) the particulars of any other offence (whether under the Army Act 1955 or the Air Force Act 1955, as the case may be, or otherwise) of which the appellant has been found guilty (during his service or otherwise), provided that any convictions treated as spent for the purposes of the Rehabilitation of Offenders Act 1974 are indicated as such; and (5) particulars of any formal police caution administered to the appellant by a constable in England and Wales or Northern Ireland: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(2). A record of antecedents signed by the appellant may be accepted in evidence by the court under head (4) *supra* where the appellant has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(3). Unless the appellant so requires, the matters referred to in the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60, as the case may be, need not be adduced in compliance with the strict rules of evidence: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 60(4); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 60(4).

46 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 61(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 61(1).

47 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 61(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 61(2).

48 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 61(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 61(3).

49 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 61(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 61(4).

50 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 62(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 62(1).

51 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 62(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 62(2).

52 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 63(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 63(1).

53 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 63(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 63(2).

54 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 63(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 63(3).

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the

Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(B) The Summary Appeal Court under Military and Air Force Law/368. Findings of the summary appeal court.

368. Findings of the summary appeal court.

On an appeal against a finding that a charge has been proved, the summary appeal court¹ may confirm or quash the finding², or in a case where the commanding officer³ or appropriate superior authority⁴ could validly have recorded a finding that another charge had been proved, may substitute for the finding a finding that that other charge has been proved⁵.

Where the court quashes a finding⁶: (1) the court must quash any punishment which relates only to that finding (or to that and one or more other findings which are also quashed)⁷; and (2) the court may vary any punishment which relates both to that and one or more other findings, so as to award any punishment which⁸ it would have been within the powers of the commanding officer or appropriate superior authority to award⁹ and, in the opinion of the court, is no more severe than the punishment originally awarded¹⁰.

Where, on an appeal against a finding that a charge has been proved, the court confirms the finding or substitutes for it a finding that another charge has been proved, the court may vary the punishment awarded by the commanding officer or appropriate superior authority, so as to award any punishment which it would have been within the powers of the commanding officer or appropriate superior authority to award and, in the opinion of the court, is no more severe than that originally awarded¹¹.

On an appeal against the punishment awarded, the court may¹²: (a) confirm the punishment awarded by the commanding officer or appropriate superior authority¹³; or (b) substitute any other punishment which¹⁴ it would have been within the powers of the commanding officer or appropriate superior authority to award¹⁵ and, in the opinion of the court, is no more severe than that originally awarded¹⁶.

Any punishment awarded by the court has effect as if awarded on the day on which the original punishment was awarded on dealing with the charge summarily¹⁷, and any finding substituted or sentence awarded by the court must be treated for all purposes as having been made or awarded by the officer who dealt summarily with the charge¹⁸.

Any decision of the summary appeal court¹⁹ must be determined by a majority of the votes of the members of the court²⁰.

1 Army Act 1955 s 83ZG(1) (s 83ZG added by the Armed Forces Discipline Act 2000 s 20(1)); Air Force Act 1955 s 83ZG(1) (s 83ZG added by the Armed Forces Discipline Act 2000 s 20(1)). As to the establishment and constitution of the summary appeal court see para 365 ante.

2 Army Act 1955 s 83ZG(1)(a) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(1)(a) (as added: see note 1 supra).

3 For the meaning of 'commanding officer' see para 353 note 4 ante.

4 For the meaning of 'appropriate superior authority' see para 354 note 8 ante.

5 Army Act 1955 s 83ZG(1)(b) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(1)(b) (as added: see note 1 supra).

6 Army Act 1955 s 83ZG(2) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(2) (as added: see note 1 supra).

7 Army Act 1955 s 83ZG(2)(a) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(2)(a) (as added: see note 1 supra).

8 Army Act 1955 s 83ZG(2)(b) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(2)(b) (as added: see note 1 supra).

9 Army Act 1955 s 83ZG(2)(b)(i) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(2)(b)(i) (as added: see note 1 supra).

10 Army Act 1955 s 83ZG(2)(b)(ii) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(2)(b)(ii) (as added: see note 1 supra).

11 Army Act 1955 s 83ZG(3) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(3) (as added: see note 1 supra).

12 Army Act 1955 s 83ZG(4) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(4) (as added: see note 1 supra).

13 Army Act 1955 s 83ZG(4)(a) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(4)(a) (as added: see note 1 supra).

14 Army Act 1955 s 83ZG(4)(b) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(4)(b) (as added: see note 1 supra).

15 Army Act 1955 s 83ZG(4)(b)(i) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(4)(b)(i) (as added: see note 1 supra).

16 Army Act 1955 s 83ZG(4)(b)(ii) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(4)(b)(ii) (as added: see note 1 supra).

17 Army Act 1955 s 83ZG(5) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(5) (as added: see note 1 supra). As to references to dealing summarily with a charge see para 356 note 1 ante.

18 Army Act 1955 s 83ZG(6) (as added: see note 1 supra); Air Force Act 1955 s 83ZG(6) (as added: see note 1 supra).

19 Ie when constituted as mentioned in the Army Act 1955 s 83ZD(1) (as added) or the Air Force Act 1955 s 83ZD(1) (as added), as the case may be: see para 365 ante.

20 Army Act 1955 s 83ZH(1) (s 83ZH added by the Armed Forces Discipline Act 2000 s 21(1)); Air Force Act 1955 s 83ZH(1) (s 83ZH added by the Armed Forces Discipline Act 2000 s 21(1)). The Army Act 1955 s 83ZH(1) (as added) and the Air Force Act 1955 s 83ZH(1) (as added) are expressed to be subject to the Army Act 1955 s 83ZF(5) (as added) and the Air Force Act 1955 s 83ZF(5) (as added), as the case may be: see para 367 ante.

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as

members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(B) The Summary Appeal Court under Military and Air Force Law/369. Record of the decision of the court on finding and the record of the proceedings.

369. Record of the decision of the court on finding and the record of the proceedings.

The decision of the summary appeal court¹ on each finding², and, except where the decision is to quash the finding, the reasons for it, must be announced separately in open court by the judge advocate³.

The decision of the court on any punishment awarded must be recorded in writing and dated and signed by the members of the court hearing the appeal⁴.

The record of proceedings in relation to an appeal includes, where appropriate, the record of the decision of the summary appeal court on each finding, and the record of the decision of the court in respect of any punishment awarded⁵. The record of proceedings must be kept in the custody of the court administration officer for a period of six years after the conclusion of the hearing of the appeal⁶. An appellant is entitled to receive a copy of the record of proceedings on an application to the court administration officer within that period⁷, and on payment of a fee at such rate as the court administration officer may determine⁸.

1 As to the establishment and constitution of the summary appeal court see para 365 ante.

2 As to findings of the summary appeal court see para 368 ante.

3 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 58(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 58(1). The decision of the court on a finding, and the reasons for it, must be recorded in writing and dated and signed by the members of the court hearing the appeal: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 58(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 58(2).

4 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 63(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 63(3).

5 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 64(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 64(1).

6 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 64(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 64(2).

7 I.e., in relation to an appellant, the period of six years after the conclusion of the hearing of the appeal: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 64(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 64(4).

8 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 64(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 64(3).

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him

proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

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The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(B) The Summary Appeal Court under Military and Air Force Law/370. Appeals from decisions of the summary appeal court.

370. Appeals from decisions of the summary appeal court.

The person who brought the appeal may question any judgment of the summary appeal court¹ on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the summary appeal court to have a case stated for the opinion of the High Court in England and Wales². The application must state the grounds on which the decision of the court is questioned³. The application must be made in writing and must be served on the applicant's commanding officer⁴ within 21 days after the date of the decision in respect of which the application is made⁵. The commanding officer must as soon as practicable serve it on the court administration officer⁶. After making the application, the applicant must as soon as practicable serve a copy of it on the prosecuting authority⁷. On receipt of the application, the court administration officer must as soon as practicable send it to the judge advocate⁸ who sat as a member of the court at the hearing to which the application relates⁹.

The function of the court in stating a case is exercised by the judge advocate sitting alone¹⁰. The judge advocate must inform the court administration officer as to whether or not he has decided to state a case and that officer must give notice in writing to the applicant of the judge advocate's decision¹¹. If the judge advocate considers that the application is frivolous, he may refuse to state a case and must in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him¹². If the judge advocate decides to state a case¹³, the applicant must, within 21 days of receiving the notice¹⁴, draft a case and serve a copy of it on the court administration officer and the prosecuting authority¹⁵. The prosecuting authority must, within 21 days of receiving a copy of the draft case, either¹⁶: (1) give notice in writing to the applicant and the court administration officer that he does not intend to take part in the proceedings before the High Court¹⁷; or (2) indicate in writing on the copy of the draft case that he agrees with it and send the copy to the court administration officer¹⁸; or (3) draft an alternative case and serve it, together with a copy of the applicant's case, on the court administration officer¹⁹. The judge advocate must consider the applicant's draft case and any alternative draft case served on the court administration officer in accordance with head (3) above²⁰ and must state and sign a case within 14 days after either²¹: (a) the date on which he receives all the documents required to be served on the court administration officer under heads (1) to (3) above²²; or (b) the expiration of the period of 21 days from receipt of a copy of the draft case²³, whichever is the sooner²⁴. Any time limit referred to above²⁵ may be extended by the judge advocate either before or after it expires²⁶.

A case stated by the court must state the facts found by the court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the court in respect of which the application is made, and the question on which the opinion of the High Court is sought²⁷.

If the judge advocate decides not to state a case but the stating of a case is subsequently required by the High Court by mandatory order²⁸, then the same procedure²⁹ applies to the stating of the case except that the period for drafting a case runs from the day on which the mandatory order was made³⁰.

1 As to the establishment and constitution of the summary appeal court see para 365 ante.

2 Army Act 1955 s 83ZH(2) (s 83ZH added by the Armed Forces Discipline Act 2000 s 21(1)); Air Force Act 1955 s 83ZH(2) (s 83ZH added by the Armed Forces Discipline Act 2000 s 21(1)).

3 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(2).

4 For the meaning of 'commanding officer' see para 353 note 4 ante.

5 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(1).

6 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(3); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(3).

7 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(4). As to the prosecuting authority see para 315 ante.

8 As to the appointment of judge advocates in relation to the summary appeal court see para 365 ante.

9 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(5); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(5).

10 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(5); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(5).

11 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(6); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(6).

12 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(7); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(7).

13 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(1); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(1).

14 Ie referred to in the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 65(6) or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 65(6), as the case may be: see the text to note 11 supra.

15 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(2); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(2).

16 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(3); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(3).

17 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(3)(a); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(3)(a).

18 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(3)(b); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(3)(b).

19 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(3)(c); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(3)(c).

20 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(4); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(4).

21 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(6); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(6).

22 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(6)(a); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(6)(a).

23 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(6)(b); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(6)(b).

24 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66(6); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66(6).

25 le referred to in the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, rr 65, 66 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, rr 65, 66, as the case may be: see the text and notes 1-24 *supra*.

26 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 67(2); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 67(2).

27 Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 67(1); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 67(1).

28 Mandatory orders were formerly termed 'orders of mandamus': see CPR 54.1(2)(b); and JUDICIAL REVIEW vol 61 (2010) PARA 703 *et seq*.

29 le the procedure under the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 66 or the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 66, as the case may be: see the text and notes 10, 13-24 *supra*.

30 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 67(3); and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 67(3).

UPDATE

359-370 The Summary Appeal Court

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 s 140(1) establishes the Summary Appeal Court for the armed services which replaces the single-service Summary Appeal Courts. The Summary Appeal Court may sit in any place, whether within or outside the United Kingdom: s 140(2). Anyone who has had a charge against him proven at a summary hearing can appeal to the Summary Appeal Court against the finding or the punishment: see s 141. For the purpose of hearing an appeal under s 141, the Summary Appeal Court is to consist of (1) a judge advocate; (2) an officer qualified for membership under s 143 and not ineligible by virtue of s 144; and (3) a third person who is an officer or warrant officer so qualified and not so ineligible: see s 142. Subject to certain exceptions, an officer is qualified to act as a member of the Summary Appeal Court if he has held a commission in Her Majesty's Forces for at least 3 years (or for periods totalling 3 years) or he was a warrant officer in Her Majesty's Forces immediately before receiving his commission: see s 143. However, certain categories of officers and warrant officers, despite being otherwise qualified to sit as members of the Summary Appeal Court, may not be members of the court for that particular appeal by virtue of any involvement in the case which is the subject of the appeal or any command relationship with the accused person: see s 144.

Subject to any provision made by Summary Appeal Court Rules (see the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211 rr 90, 91), the Summary Appeal Court must sit in open court: Armed Forces Act 2006 s 145. An appeal under s 141 against a finding is to be by way of a rehearing of the charge, and, except where the Summary Appeal Court quashes the finding, a rehearing as respects punishment: see s 146. At an appeal against finding the Summary Appeal Court can confirm the finding, quash it or substitute it with a finding that another charge has been proved: see s 147. Unless the Summary Appeal Court directs otherwise, any punishment that it substitutes is deemed to have been awarded on the day that the original punishment was awarded: see s 148. Decisions of the Summary Appeal Court must to be made on the basis of a majority of the votes of the members of the court; an appellant or a respondent may apply to the High Court to have a case stated to challenge a decision of the Summary Appeal Court on the ground that it is wrong in law or in excess of its jurisdiction: see s 149. A witness, or anyone else who has a duty to attend the Summary Appeal Court, is entitled to the same immunities and privileges as he would have had if called before the High Court in England and Wales: see s 150.

The Secretary of State may make rules with respect to the Summary Appeal Court, which may, in particular, make provision with respect to (a) sittings of the court, including the place of sitting and changes to the place of sitting; (b) the hearing of appeals and other proceedings of the court; (c) the practice and procedure of the court; (d) evidence, including the admissibility of evidence; and (e) the representation of the appellant: see s 151. In exercise of his power under s 151, the Secretary of State has made the Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

370 Appeals from decisions of the summary appeal court

NOTE 28--CPR 54.1(2)(b) revoked: SI 2003/3361.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(C) Provisions Common to all Three Services/371. Conditional release pending appeal.

(C) PROVISIONS COMMON TO ALL THREE SERVICES

371. Conditional release pending appeal.

As from a day to be appointed¹, the Secretary of State² may by order³ make provision enabling a person who has been sentenced by a summary appeal court⁴ ('the convicted person') to be released from custody subject to conditions pending the determination of an appeal to the High Court⁵.

Such an order may, in particular, make provision⁶:

- 311 (1) as to the court to which or person to whom any application for release from custody is to be made⁷;
- 312 (2) as to the manner in which any such application is to be made⁸;
- 313 (3) as to the criteria to be applied when making a decision under the order⁹;
- 314 (4) as to the conditions that may be imposed¹⁰;
- 315 (5) as to the enforcement of the attendance or return to custody of the convicted person¹¹;
- 316 (6) as to appeals against decisions taken under the order¹²; and
- 317 (7) for the time during which the convicted person is released from custody to be disregarded in computing the term of any sentence to which he is for the time being subject¹³.

Such an order may also¹⁴:

- 318 (a) make provision equivalent to that made by any provision of the Bail Act 1976, the Magistrates' Courts Act 1980 or the Supreme Court Act 1981 relating to bail in criminal proceedings, subject to such modifications as may be specified in the order¹⁵;
- 319 (b) make different provision in relation to different courts¹⁶;
- 320 (c) confer powers of arrest¹⁷;
- 321 (d) create offences punishable with imprisonment for such term not exceeding two years as may be prescribed or by any less punishment provided by the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957¹⁸; and
- 322 (e) make such amendments of the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, the Courts-Martial (Appeals) Act 1968 or the Armed Forces Act 1976 as appear to the Secretary of State to be necessary or appropriate in consequence of the order¹⁹.

1 The Armed Forces Act 2001 s 30 is to be brought into force by order under s 39(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 At the date at which this volume states the law no such order had been made.

4 As to the summary appeal court see paras 359 et seq, 365 et seq ante.

5 Armed Forces Act 2001 s 30(1) (not yet in force). The text refers to the determination of an appeal to the High Court under the Army Act 1955 s 83ZH(2) (as added), the Air Force Act 1955 s 83ZH(2) (as added), or the Naval Discipline Act 1957 s 52FN(2) (as added) (see para 364 ante), or of any appeal from the High Court to the House of Lords under the Administration of Justice Act 1960 s 1 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2020 et seq): see the Armed Forces Act 2001 s 30(2)(b) (not yet in force).

6 Ibid s 30(3) (not yet in force).

7 Ibid s 30(3)(a) (not yet in force).

8 Ibid s 30(3)(b) (not yet in force).

9 Ibid s 30(3)(c) (not yet in force).

10 Ibid s 30(3)(d) (not yet in force).

11 Ibid s 30(3)(e) (not yet in force).

12 Ibid s 30(3)(f) (not yet in force).

13 Ibid s 30(3)(g) (not yet in force).

14 Ibid s 30(4) (not yet in force).

15 Ibid s 30(4)(a) (not yet in force). As to the statutory provisions relating to bail in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1165 et seq; MAGISTRATES vol 29(2) (Reissue) para 718.

16 Ibid s 30(4)(b) (not yet in force).

17 Ibid s 30(4)(c) (not yet in force).

18 Ibid s 30(4)(d) (not yet in force). This provision is to be construed in accordance with the Army Act 1955 s 71(1) (as amended), the Air Force Act 1955 s 71(1) (as amended), and the Naval Discipline Act 1957 s 43 (as amended) (scale of punishments applicable to military, air force and naval offenders: see para 424 post): Armed Forces Act 2001 s 30(5) (not yet in force).

19 Ibid s 30(4)(e) (not yet in force).

UPDATE

371 Conditional release pending appeal

TEXT AND NOTES--Armed Forces Act 2001 s 30 now in force: SI 2006/2309. In exercise of his powers under the Armed Forces Act 2001 s 30, the Secretary of State has made the Armed Forces (Conditional Release from Custody) Order 2009, SI 2009/991, and the Court Martial Appeal Court (Bail) Order 2009, SI 2009/992.

TEXT AND NOTES 1-5--Armed Forces Act 2001 s 30(1), (2) amended: Armed Forces Act 2006 Sch 16 para 195(2), (3).

NOTE 5--2001 Act s 30(2)(b) amended: Constitutional Reform Act 2005 Sch 9 para 76 (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTE 15--Supreme Court Act 1981 now cited as Senior Courts Act 1981: 2005 Act Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

TEXT AND NOTES 18, 19--Armed Forces Act 2001 s 30(4)(d) substituted, s 30(4)(e) amended: Armed Forces Act 2006 Sch 16 para 195(4).

NOTE 18--Armed Forces Act 2001 s 30(5A) substituted for s 30(5): Armed Forces Act 2006 Sch 16 para 195(5).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(vii) Summary Proceedings/B. THE SUMMARY APPEAL COURT/(C) Provisions Common to all Three Services/372. Costs before the summary appeal court.

372. Costs before the summary appeal court.

As from a day to be appointed¹, the Secretary of State² may by regulations³ make provision empowering the summary appeal court, in any case where the court is satisfied that one party to proceedings for an offence under any of the service discipline Acts⁴ has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs⁵.

In any proceedings for an offence under any of the service discipline Acts, a summary appeal court may disallow, or, as the case may be, order the legal or other representative⁶ concerned to meet, the whole of any wasted costs⁷ or such part of them as may be determined in accordance with regulations made by the Secretary of State⁸.

1 The Armed Forces Act 2001 ss 26-28 are to be brought into force by order under s 39(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 Regulations under the Armed Forces Act 2001 s 26 (not yet in force) must provide that a person against whom an order is made by a summary appeal court under the regulations may appeal to the High Court in England and Wales: s 26(3)(b) (not yet in force). Regulations under s 26 (not yet in force) may, in particular:

103 (1) allow the making of such an order as is mentioned in s 26(1) (not yet in force) (see the text and note 5 infra) at any time during the proceedings (s 26(2)(a) (not yet in force));

104 (2) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 or under any legal aid scheme operated by any of Her Majesty's forces (Armed Forces Act 2001 s 26(2)(b) (not yet in force));

105 (3) make provision as to the account to be taken of such an order as is mentioned in s 26(1) (not yet in force) (see the text and note 5 infra) in the making of any other order as to costs in respect of the proceedings (s 26(2)(c) (not yet in force));

106 (4) make provision as to appeals against orders made by virtue of the regulations (s 26(2)(e) (not yet in force)).

At the date at which this volume states the law no such regulations had been made. As to the summary appeal court see paras 359 et seq, 365 et seq ante.

4 As to the service discipline Acts see para 302 ante.

5 Armed Forces Act 2001 s 26(1) (not yet in force). See further para 513 post.

6 'Legal or other representative', in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or a prosecuting officer appointed under the Army Act 1955 s 83C (as added), the Air Force Act 1955 s 83C (as added) or the Naval Discipline Act 1957 s 52J (as added) (see paras 315-316 ante): Armed Forces Act 2001 s 27(3) (not yet in force).

7 'Wasted costs' means any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative, or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay: *ibid* s 27(3) (not yet in force).

8 Ibid s 27(1), (3) (not yet in force). Regulations must provide that a legal or other representative against whom action is taken by a summary appeal court under s 27(1) (not yet in force) may appeal to the High Court in England and Wales: s 27(2)(b) (not yet in force). At the date at which this volume states the law no such regulations had been made. See further para 513 post.

UPDATE

372 Costs before the summary appeal court

TEXT AND NOTES--See the Armed Forces Proceedings (Costs) Regulations 2009, SI 2009/993.

A judge advocate sitting alone may direct the other members of a court to withdraw so as to make an order as to the payment of costs incurred by a party to the proceedings as a result of an unnecessary or improper act or omission by or on behalf of another party to the proceedings, or disallow or order the legal or other representative as defined under the Armed Forces Act 2001 s 27(3) to meet the whole or any part of any wasted costs as defined: Summary Appeal Court (Army) Rules 2000, SI 2000/2371 r 43A (added by SI 2005/3486), the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370 r 43A (added by SI 2005/3487), and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372 r 43A (added by SI 2005/3488).

TEXT AND NOTES 1-5--Armed Forces Act 2001 s 26(1)-(3) amended: Armed Forces Act 2006 Sch 16 para 192.

TEXT AND NOTE 1--Day now appointed: SI 2005/2861.

NOTE 3--Head (2) Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

TEXT AND NOTES 6-8--Armed Forces Act 2001 s 27(1), (2) amended: Armed Forces Act 2006 Sch 16 para 193(2), (3).

NOTE 6--Definition of 'legal or other representative' amended: Armed Forces Act 2006 Sch 16 para 193(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(viii) Waiver of Trial for Desertion/373. Dispensation with trial on confession of desertion under the Naval Discipline Act 1957.

(viii) Waiver of Trial for Desertion

373. Dispensation with trial on confession of desertion under the Naval Discipline Act 1957.

If a rating¹ subject to the Naval Discipline Act 1957² signs a confession that he is guilty of desertion, the Defence Council³ may by order dispense with his trial for that offence and, if it thinks fit, impose upon him any such forfeiture as could be imposed on conviction for desertion under Part I of the Naval Discipline Act 1957⁴. Such powers of the Defence Council may be exercised by any flag officer authorised by the Defence Council in that behalf, as well as by the Defence Council⁵. Certain flag officers are authorised to make such orders in the case of: (1) young ratings who have been sent to a young offenders' institution⁶ for some other offence committed during desertion and who are to be retained in the naval service; (2) other ratings who are sent to prison for a long term as a result of some other offence committed during desertion and who will not be retained in the naval service; and (3) ratings who are apprehended, or surrender, after being absent for five years or more, and who will not be retained in the naval service⁷. When a deserter is apprehended or surrenders after being absent for five years or more, provided he is prepared to sign a confession of desertion, his trial may be dispensed with by order made under the provisions described above and the man may be discharged administratively⁸.

1 For the meaning of 'rating' see para 156 note 1 ante.

2 As to the persons subject to naval discipline see para 306 ante.

3 As to the Defence Council see para 2 ante.

4 Naval Discipline Act 1957 s 74(1) (s 74(1), (2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended) see para 392 et seq ante. As to the forfeitures which may be imposed see para 404 post.

5 Ibid s 74(2) (as amended: see note 4 supra).

6 As to young offenders' institutions see PRISONS vol 36(2) (Reissue) para 643.

7 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 40 art 4013.

8 Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 40 art 4013.

UPDATE

373 Dispensation with trial on confession of desertion under the Naval Discipline Act 1957

TEXT AND NOTES--Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/(viii) Waiver of Trial for Desertion/374. Waiver of trial on confession of desertion under military or air force law.

374. Waiver of trial on confession of desertion under military or air force law.

Where, in accordance with Queen's Regulations¹, a warrant officer, non-commissioned officer, soldier or airman has signed a written confession that he has been guilty of desertion², his commanding officer may submit it to the Defence Council³, or to the commander (not below the rank of brigadier or group captain, as the case may be) of the person who has made the confession⁴. The Defence Council or the commander to whom the confession is submitted may, upon considering it, direct that the offence is not to be tried by court-martial⁵ or dealt with summarily⁶, and, if such a direction is given, the period of service in respect of which desertion is confessed is forfeited⁷.

1 See the Queen's Regulations for the Army 1975 paras 6.066-6.068; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1097, which provide that the warrant officer, non-commissioned officer, soldier or airman must have it explained to him that his confession is to desertion and not merely absence without leave. The air force regulations, unlike the army regulations, provide that application for dispensation with trial under the Air Force Act 1955 s 81 (as amended) (see the text and notes 2-7 *infra*) is to be made (after a confession of desertion has been signed) when service reasons render it undesirable or impracticable that the serviceman should be tried for the offence, and require that the exceptional circumstances are to be set out in the application. The regulations of both services provide standard forms of confessions and of directions dispensing with trial, and require that an explanation of the provisions of the Army Act 1955 ss 17, 81 (both as amended) or of the Air Force Act 1955 ss 17, 81 (both as amended), as the case may be, are to be given to the deserter before he signs his confession.

2 As to the offence of desertion see para 404 *post*.

3 As to the Defence Council see para 2 *ante*.

4 See the Army Act 1955 s 81(1); and the Air Force Act 1955 s 81(1) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Where the deserter is a member of the Royal Marines, instead of the confession being submitted to the Army Board (which, in cases arising under the Army Act 1955, would normally carry out this function of the Defence Council, by virtue of the Defence (Transfer of Functions) Act 1964 s 1(5) (see para 2 note 3 *ante*) or to the military authority defined in the Army Act 1955 s 81(1) (as amended), it may be submitted to the Admiralty Board or to a naval authority corresponding to the military authority so defined: s 210(4), Sch 7 para 16 (s 210(4) amended by the Navy, Army and Air Force Reserves Act 1959 s 2, Schedule; the Armed Forces Act 1971 s 75, Sch 3 para 4(1); the Armed Forces Act 1981 s 28(1), Sch 4 para 1(1); and the Reserve Forces Act 1996 s 131(1), Sch 10 para 5; the Army Act 1955 Sch 7 para 16 amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

5 As to army and air force courts-martial see para 480 *et seq post*.

6 As to summary proceedings see para 348 *et seq ante*.

7 Army Act 1955 s 81(2); Air Force Act 1955 s 81(2) (both amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). The provisions of the Army Act 1955 s 81(2) (as amended) apply to warrant officers, non-commissioned officers and marines of the Royal Marines: Armed Forces Act 1981 s 4(1). When service is thus forfeited, the provisions of the Army Act 1955 s 17(2)-(7) (as amended) (see para 199 *ante*) or of the Air Force Act 1955 s 17(2)-(7) (as amended), as the case may be, apply in relation to that forfeiture, save that references to the date on which the direction dispensing with trial was given are substituted for the references to the date of the deserter's conviction: Army Act 1955 s 81(4)(b); Air Force Act 1955 s 81(4)(b). The effect of this provision is that in so far as the provisions of the Army Act 1955 Pt I (ss 1-23) (as amended), and the Air Force Act 1955 Pt I (ss 1-23) (as amended) are still in force, they continue to apply to the deserter in respect of whom trial for desertion has been dispensed with, and the length of his liability to serve is determined as though the date of his attestation were a date earlier than the date of the direction given in respect of himself by the length of his service not forfeited, and he had on that date been enlisted to serve for a like term as that for which he was in fact serving on that date; forfeiture of service cannot, however,

have the effect of enabling the deserter to exercise any right of transfer to the reserve or determination of service at an earlier date than would have been permissible apart from the forfeiture. See further para 199 ante. Forfeited service can be wholly or partially restored in consideration of good service or on other grounds justifying its restoration: Army Act 1955 ss 17(4), 81(4) (s 17(4) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); Air Force Act 1955 ss 17(4), 81(4) (s 17(4) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

As to immunity from trial for desertion (otherwise than on active service) resulting from three years' continuous and exemplary service following the commission of the offence see the Army Act 1955 s 132(2); the Air Force Act 1955 s 132(2); and para 304 ante.

UPDATE

374 Waiver of trial on confession of desertion under military or air force law

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

NOTE 7--Armed Forces Act 1981 s 4 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/375. Application of the English law of evidence.

(ix) Evidence in Service Disciplinary Proceedings

375. Application of the English law of evidence.

Every witness before a court-martial held under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 must be examined on oath or solemn affirmation, unless the witness is under 14 years of age¹. Generally, the rules of evidence which are required to be observed in England on trials on indictment² must also be observed in courts-martial³. No person may be required in proceedings before any such court-martial to answer any question or produce any document which he could not be required to answer or produce at a trial on indictment in England⁴. A witness before a court-martial is entitled to the same immunities and privileges as a witness before the High Court in England⁵.

A court-martial is required to take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court⁶, and of all other matters of which judicial knowledge would be taken in a trial on indictment in England⁷.

¹ Army Act 1955 s 93(1B)(a) (added by the Criminal Justice Act 1991 s 71, Sch 9 para 3); Air Force Act 1955 s 93(1B)(a) (added by the Criminal Justice Act 1991 s 71, Sch 9 para 3); Naval Discipline Act 1957 s 60(2)(a) (substituted by the Criminal Justice Act 1991 s 71, Sch 9 para 7). As from a day to be appointed, these provisions are to be repealed by the Youth Justice and Criminal Evidence Act 1999 s 67(3), Sch 6. At the date at which this volume states the law no such day had been appointed. The new provisions will provide that a witness must be sworn if he is over 14 and he has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth consequent to taking the oath.

An affirmation in place of an oath is acceptable from any witness who objects to being sworn (even though he gives no reason for this) or where the administration of an oath is not reasonably practicable: Army Act 1955 s 102(1) (amended by the Oaths Act 1961 s 1; and the Administration of Justice Act 1977 ss 8(3), 32(4), Sch 5 Pt III); Air Force Act 1955 s 102(1) (amended by the Oaths Act 1961 s 1; and the Administration of Justice Act 1977 ss 8(3), 32(4), Sch 5 Pt III); Naval Discipline Act 1957 s 60(4) (amended by the Administration of Justice Act 1977 ss 8(3), 32(4), Sch 5 Pt III). Good practice indicates that every effort must be made to swear witnesses in accordance with their religious beliefs but a person who under these provisions may be permitted to affirm may also be required to do so: Army Act 1955 s 102(2); Air Force Act 1955 s 102(2); Naval Discipline Act 1957 s 60(6) (all added by the Oaths Act 1961 s 1).

² As to trials of indictments generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1232 et seq.

³ Army Act 1955 s 99(1) (amended by the Armed Forces Act 1976 s 11, Sch 5 para 3; the Police and Criminal Evidence Act 1984 s 119, Sch 6 para 28; the Armed Forces Act 1991 s 26, Sch 2 para 4(1); and the Armed Forces Act 1996 s 5, Sch 1 para 29(2)); Air Force Act 1955 s 99(1) (amended by the Armed Forces Act 1976 Sch 5 para 3; the Police and Criminal Evidence Act 1984 Sch 6 para 29; the Armed Forces Act 1991 Sch 2 para 4(1); and the Armed Forces Act 1996 Sch 1 para 45(2)); Naval Discipline Act 1957 s 64A(1) (s 64A added by the Armed Forces Act 1996 Sch 1 para 63). This is subject to the provisions relating to proofs at courts-martial by written statement (see para 376 post), to the Criminal Justice Act 1988 s 146, Sch 13 (as amended) (evidence before courts-martial, etc), and to service modifications: Army Act 1955 s 99(1) (as so amended); Air Force Act 1955 s 99(1) (as so amended); Naval Discipline Act 1957 s 64A(1) (as so added). For this purpose, 'service modifications' means such modifications as the Secretary of State may by regulations made by statutory instrument prescribe, being modifications which appear to him to be necessary or proper for the purposes of proceedings before a court-martial; 'rules' includes rules contained in or made by virtue of an enactment; and 'enactment' includes an enactment contained in an Act passed after the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act, as the case may be: Army Act 1955 s 99(1A) (s 99(1A)-(1C) added by the Police and Criminal Evidence Act 1984 Sch 6 para 28); Air Force Act 1955 s 99(1A) (s 99(1A)-(1C) added by the Police and Criminal Evidence Act 1984 Sch 6 para 29); Naval Discipline Act 1957 s 64A(2) (as so added). Such regulations may not modify the provisions relating to proofs at courts-martial by written statements (see para 376 post); and they are subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 s

99(1B), (1C) (as so added); Air Force Act 1955 s 99(1B), (1C) (as so added); Naval Discipline Act 1957 s 64A(3) (as so added). As to the Secretary of State see para 2 ante.

Equivalent provisions relating to evidence are made for the standing civilian court by the Armed Forces Act 1976 s 6(17), Sch 3 para 11 (amended by the Armed Forces Act 1991 s 26(1), Sch 2 para 4(2)). Generally the standing civilian court applies the rules of evidence applicable to a magistrates' court: see MAGISTRATES. Various evidential modifications are contained in the Standing Civilian Courts Order 1997, SI 1997/172: see para 520 et seq post.

The proceedings of the summary appeal court are conducted in accordance with the law of England and Wales: see the Army Act 1955 s 83ZF(4) (as added); the Air Force Act 1955 s 83ZF(4) (as added); the Naval Discipline Act 1957 s 52FL (as added); and para 361 ante. See also the Summary Appeal Court (Army) Rules 2000, SI 2000/2371; the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372; and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370.

4 Army Act 1955 s 99(1) (as amended: see note 3 supra); Air Force Act 1955 s 99(1) (as amended: see note 3 supra); Naval Discipline Act 1957 s 64A(1) (as added: see note 3 supra).

5 Army Act 1955 s 100; Air Force Act 1955 s 100; Naval Discipline Act 1957 s 64D (added by the Armed Forces Act 1996 Sch 1 para 63). These provisions are expressed to apply also to any other person whose duty it is to attend on or before the court-martial. Equivalent provisions apply to the summary appeal court: see the Army Act 1955 s 83ZL; the Air Force Act 1955 s 83ZL; and the Naval Discipline Act 1957 s 52FR (all added by the Armed Forces Discipline Act 2000 s 24). A witness before the court or any person whose duty it is to attend on or before the standing civilian court is entitled to the same immunity, but he cannot be required to answer questions or produce documents unless he would have to do so before a magistrates' court in England and Wales: see the Armed Forces Act 1976 Sch 3 para 11(1) (as amended: see note 3 supra).

6 The general service knowledge of the court only includes information which is known throughout the service and is not specific to any arm, service or trade.

7 Army Act 1955 s 99(3) (amended by the Armed Forces Act 1996 Sch 1 para 29(3)); Air Force Act 1955 s 99(3) (amended by the Armed Forces Act 1996 Sch 1 para 45(3)); Naval Discipline Act 1957 s 64A(4) (as added: see note 3 supra).

UPDATE

375 Application of the English law of evidence

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

NOTE 1--Day now appointed: SI 2006/2885.

NOTE 3--SI 2000/2371 amended: SI 2004/1950, SI 2005/1536. SI 2000/2370 amended: SI 2004/1949, SI 2005/1536. SI 2000/2372 amended: SI 2004/1951, SI 2005/1536. Armed Forces Act 1976 s 6, Sch 3 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/376. Admissibility of written statements.

376. Admissibility of written statements.

The statutory provisions making written statements admissible in evidence in certain criminal proceedings¹ apply for the purposes of proceedings before courts-martial, whether held in the United Kingdom² or elsewhere, as they apply for the purposes of proceedings on indictment³. Their scope is, however, widened, in that, for the purposes of court-martial proceedings, written statements are admissible in evidence if made in the United Kingdom by any person, and also if made outside the United Kingdom by any person who at the time of making the statement was either subject to service law⁴ or was a civilian to whom certain provisions of the Army Act 1955⁵, the Air Force Act 1955⁶ or the Naval Discipline Act 1957⁷ were applied⁸. The Secretary of State has power to modify the statutory provisions as to the admissibility of written statements in their application to courts-martial⁹.

The same provisions, as widened in scope and subject to the same modifications, apply also to proceedings before standing civilian courts and the summary appeal court, and are for that purpose further modified in detail by order made by the Secretary of State¹⁰.

Any false statement in a written statement rendered admissible in proceedings before courts-martial¹¹ is punishable under the Criminal Justice Act 1967¹².

¹ See the Criminal Justice Act 1967 s 9 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1535.

² As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

³ Army Act 1955 s 99A(1) (s 99A added by the Armed Forces Act 1976 s 11, Sch 5 para 1; and the Army Act 1955 s 99A(1) amended by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 para 28); Air Force Act 1955 s 99A(1) (s 99A added by the Armed Forces Act 1976 Sch 5 paras 1, 2; and the Air Force Act 1955 s 99A(1) (amended by the Police and Criminal Evidence Act 1984 Sch 6 para 29); Naval Discipline Act 1957 s 64B(1) (s 64B added by the Armed Forces Act 1996 s 5, Sch 1 para 63).

These provisions apply subject to service modifications: see the Army Act 1955 s 99A(1) (as so added and amended); the Air Force Act 1955 s 99A(1) (as so added and amended); and the Naval Discipline Act 1957 s 64B(1) (as so added). For this purpose, 'service modifications' means: (1) modifications made by any regulations under the Criminal Justice Act 1967 s 12 (as amended) (see paras 379-380 post); and (2) such modifications in s 9 (as amended), as applied to courts-martial, as the Secretary of State may by regulations made by statutory instrument prescribe, being modifications which appear to him to be necessary or proper for the purpose of the operation of that provision in relation to proceedings before a court-martial; and such regulations are subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 s 99A(3), (4) (as so added); Air Force Act 1955 s 99A(3), (4) (as so added); Naval Discipline Act 1957 s 64B(3), (4) (as so added); and see the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997, SI 1997/173. As to the Secretary of State see para 2 ante.

⁴ For the meaning of 'service law' see para 399 note 2 post.

⁵ ie the Army Act 1955 Pt II (ss 24-143) (as amended). See para 311 ante.

⁶ ie the Air Force Act 1955 Pt II (ss 24-143) (as amended). See para 311 ante.

⁷ ie the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended). See para 311 ante.

⁸ Army Act 1955 s 99A(2) (as added: see note 3 supra); Air Force Act 1955 s 99A(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 64B(2) (as added: see note 3 supra). The persons whose statements are thus rendered admissible include any who are treated as continuing subject to service law, notwithstanding their having ceased to be subject to it, by virtue of the Army Act 1955 s 131 (as amended), the Air Force Act

1955 s 131 (as amended), or the Naval Discipline Act 1957 s 119 (see para 306 ante): Army Act 1955 s 99A(2) (as so added); Air Force Act 1955 s 99A(2) (as so added); Naval Discipline Act 1957 s 64B(2) (as so added). The subjection of civilians to service law is achieved by the provisions of the Army Act 1955 s 208A (as added) or s 209 (as amended), the Air Force Act 1955 s 208A (as added) or s 209 (as amended), and the Naval Discipline Act 1957 s 117 (as amended) or s 118 (as amended): see para 311 ante.

9 See note 3 supra. The Secretary of State has made regulations modifying the provisions of the Criminal Justice Act 1967 s 9(2), (5), (8) (s 9(5), (8) as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1535): see the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997, SI 1997/173.

10 In respect of the standing civilian court see the Armed Forces Act 1976 s 6(17), Sch 3 para 12(1), (3) (as amended) (see para 522 post); and the Standing Civilian Courts Order 1997, SI 1997/172, art 91, Sch 4. In respect of the summary appeal court see the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27(1)(b), Sch 3 Pt I; the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27(1)(b), Sch 3 Pt I; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27(1)(b), Sch 3 Pt I.

11 le under the Criminal Justice Act 1967 s 9 (as amended): see the text and notes 1-9 supra.

12 Army Act 1955 s 99A(5) (as added: see note 3 supra); Air Force Act 1955 s 99A(5) (as added: see note 3 supra); Naval Discipline Act 1957 s 64B(5) (as added: see note 3 supra). A false statement is punishable under the Criminal Justice Act 1967 s 89 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 719. If such an offence is committed by a person subject to service law, he may be tried by court-martial on a charge of committing a civil offence: see para 422 post.

UPDATE

376 Admissibility of written statements

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/377. Proof of official documents.

377. Proof of official documents.

In proceedings under the Army Act 1955 or the Air Force Act 1955, whether before a civil court, a court-martial or otherwise, or in proceedings under the Naval Discipline Act 1957 before a court-martial, the proof of matters stated in certain official service documents or records is facilitated by provisions contained in those Acts by which the documents and records themselves are made evidence of their contents, without proof being necessary of any signatures or other authentication required to appear upon them¹. Thus a document which purports to be a copy of any person's attestation paper signed by him is evidence of the enlistment of the person attested². The attestation paper purporting to be signed by a person on enlistment is evidence of his having given the answers recorded in it³. A letter, return or other document purporting to be issued by or on behalf of the Defence Council⁴, or by a person authorised by the Defence Council⁵, and stating the time at which, or the period during which, any person was serving in or was discharged from any part of Her Majesty's forces⁶, his rank or appointment, if any, in any of those forces at any specified time or during any specified period, and his authorised decorations⁷ or other badges or emblems, if any, is evidence of the matters stated in it⁸. A record in any prescribed service book or service record or other document made in pursuance of any Act⁹, or of Queen's Regulations, or in pursuance of military, air force or naval duty, and purporting to be signed by the commanding officer or other person whose duty it was to make it, is evidence of the facts stated in it¹⁰. A document or certificate purporting to be issued by or on behalf of the Defence Council or by a person authorised by it, and to contain Defence Council instructions or regulations, or that states that a decoration of a description specified in or annexed to the certificate is a naval, military or air force decoration or that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the Defence Council, is evidence of the matters stated in the document or certificate¹¹.

In proceedings against any person, a certificate purporting to be signed by his commanding officer or any officer authorised by the commanding officer to give the certificate, stating the contents of any part of the standing orders, or other routine orders of a continuing nature, of any formation, unit or other body of any of Her Majesty's forces, or of any command area, garrison or other place, or of any ship¹², train or aircraft¹³, is evidence of the matters stated in it¹⁴.

1 See the Army Act 1955 s 198(1); the Air Force Act 1955 s 198(1); and the Naval Discipline Act 1957 s 64C(1) (s 64C added by the Armed Forces Act 1996 s 5, Sch 1 para 63). Any document which would be evidence in any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 may in like manner, subject to the like conditions, and for the like purposes, be evidence in a court-martial under the other Acts: see the Army Act 1955 s 198(9) (amended by the Armed Forces Act 1996 s 5, Sch 1 para 70); the Air Force Act 1955 s 198(9) (amended by the Armed Forces Act 1996 Sch 1 para 80); and the Naval Discipline Act 1957 s 64C(8) (as so added).

2 Army Act 1955 s 198(2); Air Force Act 1955 s 198(2). The purported copy must, however, be certified to be a true copy by a person stated in the certificate to have the custody of the original, and it is not evidence of anything more than the actual enlistment of the person enlisted: Army Act 1955 s 198(2); Air Force Act 1955 s 198(2). There are no equivalent provisions in the Naval Discipline Act 1957. As to attestation papers see para 197 ante. The information contained in the attestation paper is not conclusive proof of enlistment.

3 Army Act 1955 s 198(3); Air Force Act 1955 s 198(3). In this instance, the original signed paper must be produced; cf the position under the provisions cited in note 2 supra. There are no equivalent provisions in the Naval Discipline Act 1957.

4 As to the Defence Council see para 2 ante.

5 The Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1173 provides that the matters specified in the Air Force Act 1955 s 198(4) (as amended) may be proved in evidence by production of a letter, return, or other relevant document signed by the officer commanding the unit to which the person concerned belongs or is attached for the time being, or by the officer or other person who has been appointed to maintain the records relating to the person concerned.

6 As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

7 As to the meaning of 'decoration' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 47 note 3 ante. For the purposes of the Naval Discipline Act 1957, 'decoration' includes medal, medal ribbon, clasp and good conduct badge: s 135(1).

8 Army Act 1955 s 198(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I); Air Force Act 1955 s 198(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); Naval Discipline Act 1957 s 64C(2) (as added: see note 1 supra).

9 See eg the Army Act 1955 s 136(1) and the Air Force Act 1955 s 136(1), which require a record of the report of a board of inquiry as to a person's illegal absence for a period of not less than 21 days to be entered in the service books. As to what are service books see the Queen's Regulations for the Army 1975 para 5.545 Annex 5G; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1174(1).

10 Army Act 1955 s 198(5) (amended by the Army and Air Force Act 1961 s 38(1), Sch 2); Air Force Act 1955 s 198(5) (amended by the Army and Air Force Act 1961 Sch 2); Naval Discipline Act 1957 s 64C(3) (as added: see note 1 supra). A copy of such a record (including the signature) which purports to be certified (by the person stated in the certificate to have custody of the original) to be a true copy, is evidence of the record: Army Act 1955 s 198(5) (amended by the Army and Air Force Act 1961 Sch 2); Air Force Act 1955 s 198(5) (amended by the Army and Air Force Act 1961 Sch 2); Naval Discipline Act 1957 s 64C(4) (as added: see note 1 supra).

11 Army Act 1955 s 198(6), (7) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); Air Force Act 1955 s 198(6), (7) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); Naval Discipline Act 1957 s 64C(5), (6) (as added: see note 1 supra).

12 For the meaning of 'ship' see para 21 note 13 ante.

13 For the meaning of 'aircraft' see paras 6 note 4, 21 note 13 ante.

14 Army Act 1955 s 198(8) (amended by the Armed Forces Act 1971 s 43, Sch 1 para 1(8)); Air Force Act 1955 s 198(8) (amended by the Armed Forces Act 1971 Sch 1 para 1(8)); Naval Discipline Act 1957 s 64C(7) (as added: see note 1 supra).

UPDATE

377 Proof of official documents

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Secretary of State may by regulations make provision with respect to evidence, including the admissibility of evidence, in proceedings for an offence created by or under the Armed Forces Act 2006 before a civilian court in any part of the United Kingdom, the Isle of Man, or a British overseas territory: s 372. As to the regulations so made, see the Armed Forces (Evidence in Proceedings before Civilian Court) Regulations 2009, SI 2009/1112.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/378. Proof of arrest or surrender.

378. Proof of arrest or surrender.

Where proceedings under the Army Act 1955 or the Air Force Act 1955 on a charge of desertion or absence without leave¹ are brought against a person who was taken into military, air force or naval custody on arrest or surrender, a certificate signed by a provost officer², or any other officer in charge of the guardroom or other place where the accused was confined on being taken into custody, and stating the fact, date, time and place of his arrest or surrender, is evidence in those proceedings of the matters stated in the certificate³. Similarly, where such proceedings are against a person who surrendered himself to a consular officer⁴, a certificate signed by that officer, and stating the fact, date, time and place of the surrender, is evidence of the matters so stated in the certificate⁵. Where the proceedings are against a person who surrendered himself to a constable, and was delivered into military or air force custody without being brought before a court⁶, a certificate handed over with the accused⁷, and signed by the officer of police who causes him to be delivered into military custody, containing the prescribed particulars⁸ as to the surrender, is evidence of the matters so stated⁹. Where such proceedings are against a person who was previously brought before a court of summary jurisdiction as illegally absent¹⁰ and was delivered by that court into military or air force custody, a certificate handed over with him¹¹, signed by a justice of the peace¹², and containing the prescribed particulars¹³ as to the arrest or surrender of the accused and of the proceedings before the court, is evidence in the subsequent service disciplinary proceedings of the matters there stated¹⁴. Where a warrant for the arrest of a person suspected of an offence against Part II of the Army Act 1955 or Part II of the Air Force Act 1955¹⁵, addressed to a police officer, has been issued¹⁶ by the commanding officer of the suspected person, and that person has been arrested under the warrant and delivered into military or air force custody, as the case may be, a certificate handed over with him¹⁷, signed by the police officer delivering him into such custody, and stating the fact, date, time and place of his arrest, and whether at the time of his arrest he was wearing the uniform of any of Her Majesty's military or air forces¹⁸, as the case may be, is evidence of the matters stated in it¹⁹.

In any proceedings for an offence under Part I of the Naval Discipline Act 1957²⁰ against a person who has surrendered himself to any consular officer, or, on arrest or surrender, has been taken into custody by a provost officer²¹ or is in custody at any police station, guard room or other place in any part of Her Majesty's dominions²², a certificate signed by the consular or provost officer or by the officer in charge of the police station, guard room or other place, as the case may be, stating the fact, date, time and place of arrest or surrender and whether or not that person was wearing the uniform²³ of any of Her Majesty's naval forces²⁴ at the time is evidence of the matter stated in the certificate²⁵. Where a person who is alleged to be a deserter or otherwise illegally absent from his ship or place of duty is brought before a court of summary jurisdiction and subsequently delivered into naval custody, a certificate signed by a justice of the peace²⁶ stating the fact, date, time and place of arrest or surrender, whether or not uniform was worn at that time, and containing such particulars as may be prescribed by the Defence Council as to the proceedings before the court, is evidence of the matters so stated in any proceedings for an offence of desertion or illegal absence from the offender's ship²⁷. Any such certificate which is signed by a police officer in respect of a person who has been arrested under a naval warrant²⁸ as being suspected of an offence under Part I of the Naval Discipline Act 1957, or who has surrendered to the police as being illegally absent from the naval forces and has not been brought before a court²⁹, must be in the form prescribed and must be handed over with the accused on his delivery into naval custody³⁰. These requirements apply also to

such a certificate signed by a justice of the peace in respect of a person delivered into naval custody by a court of summary jurisdiction³¹ as being illegally absent from the naval forces³².

1 As to the offences of desertion and absence without leave see para 404 post.

2 For the meaning of 'provost officer' see para 403 note 3 post. The provost officers of each of the services have equivalent powers over the personnel of one another's services.

3 Army Act 1955 s 189(3)(b); Air Force Act 1955 s 189(3)(b). The certificate has the same evidential effect if signed by an officer of a Commonwealth or colonial force, corresponding to a provost: see the Army Act 1955 s 189(3)(b); and the Air Force Act 1955 s 189(3)(b). For the meaning of 'Commonwealth force' see para 20 note 6 ante. As to the meaning of 'colony' see para 20 note 4 ante. Having regard to the wording of the statutory provisions cited, the certificate should not contain a statement that the accused, on his arrest or surrender, was wearing civilian clothes, and if it does contain such a statement it is not admissible as evidence that he was in fact so dressed: *R v Mahoney* [1956] 3 All ER 799, [1957] 1 WLR 98, C-MAC. Cf the provisions relating to naval deserters or absentees: see the text and notes 26-27 infra. See also note 18 infra.

4 As to consular officers see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 30.

5 Army Act 1955 s 189(3)(aa); Air Force Act 1955 s 189(3)(aa) (both added by the Armed Forces Act 1971 s 56(3)).

6 Ie pursuant to the Army Act 1955 s 188(2) or the Air Force Act 1955 s 188(2): see para 64 ante. As to the duty of the police officer to furnish a certificate in such a case see the Army Act 1955 s 189(2); the Air Force Act 1955 s 189(2); and para 64 ante.

7 This requirement is one of the conditions requisite to make the certificate admissible in evidence.

8 'Prescribed' means prescribed by regulations made by the Secretary of State by statutory instrument: Army Act 1955 s 189(4); Air Force Act 1955 s 189(4). As to the prescribed form of the certificate and the particulars to be contained in it see the Certificates of Arrest and Surrender (Army) Regulations 1972, SI 1972/318, reg 3, Schedule Pt II; and the Certificates of Arrest and Surrender (Air Force) Regulations 1972, SI 1972/286, reg 3, Schedule Pt II. As to the Secretary of State see para 2 ante.

9 Army Act 1955 s 189(2), (3)(a); Air Force Act 1955 s 189(2), (3)(a).

10 Ie pursuant to the Army Act 1955 s 187 (as amended) or the Air Force Act 1955 s 187 (as amended): see para 63 ante. As to the court's duty to furnish a certificate in such a case see the Army Act 1955 s 189(1) (as amended); the Air Force Act 1955 s 189(1) (as amended); and para 63 ante.

11 See note 7 supra.

12 Any such certificate issued after 1 January 1962, relating to proceedings in a court in England and Wales, may be signed either by a justice of the peace or by the clerk of the court: see the Army and Air Force Act 1961 ss 30(a), 39(3). Corresponding provision is made by s 30(b)-(h) for certificates relating to courts in other territories both within and outside the United Kingdom. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

13 As to the prescribed form of the certificate and the particulars to be contained in it see the Certificates of Arrest and Surrender (Army) Regulations 1972, SI 1972/318, reg 2, Schedule Pt I; and the Certificates of Arrest and Surrender (Air Force) Regulations 1972, SI 1972/286, reg 2, Schedule Pt I.

14 Army Act 1955 s 189(1), (3)(a); Air Force Act 1955 s 189(1), (3)(a).

15 Ie against the Army Act 1955 Pt II (ss 24-143) (as amended) or the Air Force Act 1955 Pt II (ss 24-143) (as amended). See further para 392 et seq post.

16 Ie pursuant to the Army Act 1955 s 190A(1) (as added) or the Air Force Act 1955 s 190A(1) (as added): see para 65 ante.

17 Ie as required by the Army Act 1955 s 190A(3) (as added) or by the Air Force Act 1955 s 190A(3) (as added): see para 65 ante.

18 As the inclusion in the certificate of a reference to the uniform, if any, worn by the suspected person at the time of his arrest is a statutory requirement in this instance (see the Army Act 1955 s 190A(3) (as added); and the Air Force Act 1955 s 190A(3) (as added)), that information is admissible in evidence, and *R v Mahoney* [1956] 3 All ER 799, [1957] 1 WLR 98, C-MAC (see note 3 supra), has no application.

19 Army Act 1955 s 190A(4); Air Force Act 1955 s 190A(4) (both added by the Armed Forces Act 1971 s 44(2)). For the form of the certificate see the Certificates of Arrest and Surrender (Army) Regulations 1972, SI 1972/318, reg 4, Schedule Pt III; and the Certificates of Arrest and Surrender (Air Force) Regulations 1972, SI 1972/286, reg 4, Schedule Pt III.

20 *le* the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended): see para 392 *et seq post*.

21 For the purposes of arrest and surrender, 'provost officer' includes a corresponding officer of the forces of a Commonwealth country or a force raised under the law of any colony: Naval Discipline Act 1957 s 47(3).

22 As to the meaning of 'Her Majesty's dominions' see para 20 note 5 *ante*.

23 In relation to attached members of the military or air forces, this is to be construed as referring to the uniform of any of the regular forces or the regular air force: Naval Discipline Act 1957 s 113(2), Sch 2 para 10. As to such attached members see para 309 *ante*.

24 For the meaning of 'Her Majesty's naval forces' see para 7 *ante*.

25 Naval Discipline Act 1957 s 47(1).

26 Any such certificate issued after 1 April 1967 relating to proceedings in a court in England or Wales may be signed either by a justice of the peace or by the clerk of the court: see the Armed Forces Act 1966 ss 33(a), 38(5). Corresponding provision is made by s 33(b)-(h) for certificates relating to courts in other territories both within and outside the United Kingdom.

27 Naval Discipline Act 1957 s 47(2) (amended by the Armed Forces Act 1971 s 77(1), Sch 4 Pt I; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2(1), Sch 1 Pt I).

28 *le* a warrant issued under the Naval Discipline Act 1957 s 103(1) (as amended): see para 65 *ante*.

29 *le* pursuant to *ibid* s 108: see para 64 *ante*.

30 *Ibid* s 110(1), (3) (s 110(3) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). Compliance with these requirements is necessary to make such a certificate admissible in evidence, and it is the duty of the police officer to furnish such a certificate on delivering the accused into naval custody: Naval Discipline Act 1957 ss 47(1), 103(3), 110(1). For the prescribed form of the certificate see the Certificates of Arrest and Surrender (Royal Navy) Regulations 1972, SI 1972/430, reg 2, Schedule Pt I.

31 *le* pursuant to the Naval Discipline Act 1957 s 109 (as amended): see para 63 *ante*.

32 See *ibid* s 47(2) (as amended: see note 27 *supra*), s 110(2). For the prescribed form of the certificate see the Certificates of Arrest and Surrender (Royal Navy) Regulations 1972, SI 1972/430, reg 3(1), Schedule Pt II.

UPDATE

378 Proof of arrest or surrender

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

NOTE 12--Army and Air Force Act 1961 repealed: Armed Forces Act 2006 Sch 17.

NOTE 26--Armed Forces Act 1966 repealed: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/379. Proof of facts by formal admissions.

379. Proof of facts by formal admissions.

The statutory provisions providing for formal admissions of facts to be made by the prosecution or the defence in any civilian criminal proceedings¹ apply, with minor modifications², to the proceedings of courts-martial³, standing civilian courts, and the summary appeal court⁴.

¹ See the Criminal Justice Act 1967 s 10 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1538.

² For the modifications applicable to courts-martial see the Criminal Justice Act 1967 (Application to Courts-Martial (Evidence) Regulations 1997, SI 1997/173, reg 2, Schedule. For the modifications applicable to standing civilian courts see the Standing Civilian Courts Order 1997, SI 1997/172, art 91, Sch 4. For the modifications applicable to the summary appeal court see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27(1)(c), (2)(c), Sch 3 Pt II; the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27(1)(c), (2)(c), Sch 3 Pt II; and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27(1)(d), (2)(c), Sch 3 Pt II.

³ See courts-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957. See para 448 et seq post.

⁴ See the Criminal Justice Act 1967 s 12 (amended by the Armed Forces Act 1996 ss 5, 35(2), Sch 1 para 99, Sch 7 Pt I); the Army Act 1955 ss 83ZF(4), 83ZJ(2)(I) (added by the Armed Forces Discipline Act 2000 ss 19(1), (2), 22(1), (2); the Air Force Act 1955 ss 83ZF(4), 83ZJ(2)(I) (added by the Armed Forces Discipline Act 2000 ss 19(1), (2), 22(1), (2); and the Naval Discipline Act 1957 ss 52FL(4), 52FP(2)(k) (added by the Armed Forces Discipline Act 2000 ss 19(1), (2), 22(1), (2)). As to standing civilian courts see para 520 et seq post. As to the summary appeal court see para 359 et seq ante.

UPDATE

379 Proof of facts by formal admissions

TEXT AND NOTE 4--Criminal Justice Act 1967 s 12 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/380. Notice of particulars of alibi.

380. Notice of particulars of alibi.

The statutory provisions precluding a defendant on a trial on indictment from adducing evidence in support of an alibi, without leave of the court, unless he has given prior notice of particulars of the alibi¹ apply, with modifications², to the proceedings of courts-martial³ and the summary appeal court⁴. The procedure is laid down in subordinate legislation⁵.

1 In the Criminal Justice Act 1967 s 11 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1384. Although the Criminal Justice Act 1967 s 11 has been repealed for other purposes by the Criminal Procedure and Investigations Act 1996 s 74(1), (4), this does not affect its application to proceedings before courts-martial: s 74(3).

2 For the application and modifications see the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997, SI 1997/173, reg 2, Schedule. These modifications: (1) substitute certain expressions apt for service proceedings for those used in the Criminal Justice Act 1967; (2) provide that leave to adduce alibi evidence under s 11 (as amended) must not be refused by the court if it appears to the court that the accused was not informed of the requirements of s 11 (as amended) at the time he was notified by his commanding officer that he was to be tried by court-martial; (3) require notice of alibi particulars to be given in writing to the prosecutor; and (4) define the prescribed period as the period of 14 days from the date on which the accused was notified by his commanding officer that he was to be tried by court-martial.

3 In courts-martial under the Army Act 1955, the Air Force Act 1955 (see para 480 et seq post) or the Naval Discipline Act 1957 (see para 448 et seq post). See note 2 supra.

4 See the Criminal Justice Act 1967 s 12 (amended by the Armed Forces Act 1996 ss 5, 35(2), Sch 1 para 99, Sch 7 Pt I). The Criminal Justice Act 1967 s 11 (as amended) is applied to the summary appeal court, with modifications, by the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27(1)(c), (2)(c), Sch 3 Pt II; the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27(1)(c), (2)(c), Sch 3 Pt II; and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27(1)(d), (2)(c), Sch 3 Pt II. These substitute certain expressions apt for service proceedings for those used in the Criminal Justice Act 1967.

5 In relation to military and air force courts-martial, where the prosecutor requires, and in relation to naval courts-martial, in all cases, the commanding officer, when serving the accused with the prosecution papers, must serve on the accused a statement setting out the effect of the Criminal Justice Act 1967 s 11 (as amended) and a form for the accused to give notice of alibi: Courts-Martial (Army) Rules 1997, SI 1997/169, r 11(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 11(3); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 10(3), (4). Similar provision is made in relation to summary appeal court procedure by the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 18(3)(a); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 18(3)(a); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 18(3)(a).

UPDATE

380 Notice of particulars of alibi

NOTE 1--Criminal Procedure and Investigations Act 1996 s 74(3) repealed: Armed Forces Act 2006 Sch 17.

TEXT AND NOTE 4--Criminal Justice Act 1967 s 12 repealed: Armed Forces Act 2006 Sch 17.

NOTE 5--SI 1997/169 replaced: Courts-Martial (Army) Rules 2007, SI 2007/3442. SI 1997/171 replaced: Courts-Martial (Royal Air Force) Rules 2007, SI 2007/3444. SI 1997/170 replaced: Courts-Martial (Royal Navy) Rules 2007, SI 2007/3443.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/381. First hand hearsay and business or other documents.

381. First hand hearsay and business or other documents.

First hand hearsay and business or other documents are admissible, in relation to proceedings in the United Kingdom or elsewhere, before a court-martial, the Courts-Martial Appeal Court and the standing civilian court to the same extent as they are admissible in civilian criminal proceedings¹, save that to satisfy the statutory requirements in respect of first hand hearsay the person who made the statement which is sought to be admitted must be outside the country where the court is sitting². First hand hearsay and business or other documents are also admissible in the summary appeal court in like manner³.

If, having regard to all the circumstances, the court-martial, the Courts-Martial Appeal Court or the standing civilian court is of the opinion that in the interests of justice a statement which is admissible⁴ nevertheless ought not to be admitted, it may direct that the statement must not be admitted⁵. This also applies to the summary appeal court⁶.

1 See the Criminal Justice Act 1988 ss 23, 24, 146 (all as amended), Sch 13 para 2.

2 See *ibid* Sch 13 para 2.

3 See the Army Act 1955 s 83ZJ(2), (3) (added by the Armed Forces Discipline Act 2000 s 22(1)); the Air Force Act 1955 s 83ZJ(2), (3) (added by the Armed Forces Discipline Act 2000 s 22(1)); the Naval Discipline Act 1957 s 52FP(2), (3) (added by the Armed Forces Discipline Act 2000 s 22(2)); the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27(1)(e); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27(1)(e); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27(1)(f).

4 *Ie* by virtue of the Criminal Justice Act 1988 s 23 (as amended) or s 24 (as amended): see the text and note 1 *supra*.

5 See *ibid* s 25 (as amended), Sch 13 para 3.

6 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27(1)(e); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27(1)(e); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27(1)(f).

UPDATE

381 First hand hearsay and business or other documents

TEXT AND NOTES 1-5--Criminal Justice Act 1988 ss 23-25, Sch 13 paras 2, 3 repealed: Criminal Justice Act 2003 Sch 37 Pt 6.

TEXT AND NOTE 3--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

NOTE 6--See Armed Forces (Summary Appeal Court) Rules 2009, SI 2009/1211.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/382. Statements in documents that appear to have been prepared for the purposes of criminal proceedings or investigations.

382. Statements in documents that appear to have been prepared for the purposes of criminal proceedings or investigations.

Where a statement relating to first hand hearsay and business or other documents which is admissible in criminal proceedings¹ appears to the court-martial, the Courts-Martial Appeal Court or the standing civilian court to have been prepared² for the purposes of pending or contemplated criminal proceedings or of a criminal investigation, the statement must not be given in evidence in any criminal proceedings without the leave of the judge advocate³ or, in the standing civilian court, the magistrate⁴. The reference to 'criminal proceedings' has been extended to include summary proceedings⁵ and the reference to 'criminal investigation' has been extended to include any investigation which may lead to proceedings before a court-martial or standing civilian court, or to summary proceedings⁶. These provisions also govern the admissibility of evidence before the summary appeal court⁷.

The judge advocate or magistrate will only grant leave for the document to be adduced in evidence if he is satisfied that to do so would be in the interests of justice having applied the same criteria as would be applied in a trial on indictment in England⁸.

1 le by virtue of the Criminal Justice Act 1988 ss 23, 24 (both as amended): see para 381 ante.

2 le otherwise than in accordance with the Criminal Justice (International Co-operation) Act 1990 s 3 (letters of request) or an order under the Criminal Justice Act 1988 Sch 13 para 6 (as amended) or under s 30 (as amended) or s 31: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1473, 1484 et seq; CIVIL PROCEDURE vol 11 (2009) PARA 1001. Service courts do not, however, have the power to issue letters of request. No application may be made under the Criminal Justice (International Co-operation) Act 1990 s 3 in relation to any offence which is or is to be the subject of proceedings before a service court, but the Secretary of State may by order make provision as to letters of request or corresponding documents for such proceedings: Criminal Justice Act 1988 Sch 13 para 6(1) (amended by the Criminal Justice (International Co-operation) Act 1990 s 31(1), Sch 4 para 6(3)). It is submitted that evidence provided to a civil court may be admissible in a service court if, for instance, jurisdiction is transferred to the services after first having been commenced in the civil courts. As to the Secretary of State see para 2 ante.

3 le who is responsible for all matters of law including practice and procedure: see the Army Act 1955 s 84B(3), (4); the Air Force Act 1955 s 84B(3), (4); and the Naval Discipline Act 1957 s 53B(3), (4) (all added by the Armed Forces Act 1996 s 5, Sch 1 paras 19, 35, 51). As to the judge advocate see para 484 post.

4 See the Criminal Justice Act 1988 ss 26, 146 (both as amended), Sch 13 para 4.

5 le summary proceedings under the Army Act 1955 s 76B (as added and amended), the Air Force Act 1993 s 76B (as added and amended) (see para 356 ante) or the Naval Discipline Act 1957 s 52D (as added and amended) (see para 350 ante).

6 See the Criminal Justice Act 1988 Sch 13 para 4.

7 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 27(1)(e); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 27(1)(e); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 27(1)(f).

8 See the Army Act 1955 s 99(1) (amended by the Armed Forces Act 1976 s 11, Sch 5 para 3; the Police and Criminal Evidence Act 1984 s 119, Sch 6 para 28; the Armed Forces Act 1991 s 26, Sch 2 para 4(1); and the Armed Forces Act 1996 Sch 1 para 29(2)); the Air Force Act 1955 s 99(1) (amended by the Armed Forces Act 1976 Sch 5 para 3; the Police and Criminal Evidence Act 1984 Sch 6 para 29; the Armed Forces Act 1991 Sch 2 para 4(1); and the Armed Forces Act 1996 Sch 1 para 45(2)); and the Naval Discipline Act 1957 s 64A(1) (added by the Armed Forces Act 1996 Sch 1 para 63).

UPDATE

382 Statements in documents that appear to have been prepared for the purposes of criminal proceedings or investigations

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

NOTE 1--Criminal Justice Act 1988 ss 23, 24 repealed: Criminal Justice Act 2003 Sch 37 Pt 6.

NOTE 2--1988 Act Sch 13 para 6 further amended, Criminal Justice (International Co-operation) Act 1990 s 3 repealed: Crime (International Co-operation) Act 2003 Sch 5 paras 16, 42. For savings see SI 2004/787.

NOTES 4, 5--1988 Act Sch 13 para 4 repealed: 2003 Act Sch 37 Pt 6.

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383. Forms of evidence and glossaries.

Provision is made so that courts-martial may be provided with glossaries to enable them to understand complicated issues and technical terms¹.

¹ Criminal Justice Act 1988 s 146, Sch 13 para 7 (amended by the Armed Forces Act 1996 s 5, Sch 1 para 109(1), (4); and the Armed Forces Act 2001 s 38, Sch 7 Pt 1).

UPDATE

383 Forms of evidence and glossaries

TEXT AND NOTE--Criminal Justice Act 1988 s 146 further amended, Sch 13 para 7 repealed: Armed Forces Act 2006 Sch 16 paras 113, 115, Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/384. Television links in respect of witnesses in a country other than that in which the service court is sitting.

384. Television links in respect of witnesses in a country other than that in which the service court is sitting.

A person other than the accused may give evidence through a live television link in proceedings before service courts¹ provided that the witness is not in the country where the court is sitting². Leave is required³. The principles which will be applied by the judge advocate or magistrate are identical to those which would be applied on a trial on indictment⁴. The prosecutor or accused must make his application for leave for evidence to be given by a witness through a live television link as soon as practicable after the commencement of the trial⁵. Accordingly, the rules do not allow this matter to be dealt with on a preparatory hearing or a directions hearing.

An application cannot be made without leave of the judge advocate unless, not less than 28 days before the date of the trial, the party making the application has served notice⁶ on every other party, the Judge Advocate General or his deputy⁷, and the court administration officer, stating: (1) the grounds of the application; (2) the name of the witness; (3) where the witness is under 18, his date of birth; (4) the country or place where it is proposed that the witness will be when giving evidence; (5) the name, occupation and relationship to the witness of any person whom it is proposed should accompany the witness; and (6) the grounds on which it is submitted that the person should accompany the witness⁸.

The rules in respect of evidence by television link before the standing civilian court are almost identical to those described above⁹.

In respect of the summary appeal court, a person other than the appellant may, with the leave of the court¹⁰, give evidence through a live television link or other similar arrangements if the witness is not in the country where the court is sitting for the purposes of hearing the appeal¹¹. The application may be made at the hearing of the appeal, in which case it must be made as soon as practicable after the commencement of the hearing¹². It appears that an application for evidence to be given by television link may be dealt with as a preliminary hearing¹³. The preliminary hearing before the summary appeal court where the judge advocate sits alone may be by television link¹⁴. There is no rule allowing this procedure at directions hearings or preparatory hearings for courts-martial although in practice this procedure is often adopted.

1 'Service courts' means courts-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, the Courts-Martial Appeal Court and standing civilian courts: Criminal Justice Act 1988 s 146, Sch 13 para 1 (definition amended by the Armed Forces Act 2001 s 38, Sch 7 Pt I).

2 See the Criminal Justice Act 1988 s 32(1)-(3) (as amended), Sch 13 para 8(1), (2)(a); the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996, SI 1996/2592, art 2, Schedule; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414.

3 See the Criminal Justice Act 1988 s 32(1).

4 See para 375 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414 et seq. As to the judge advocate see paras 453, 484 post.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 60(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 60(1); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 51(1).

6 le in the form provided in the Courts-Martial (Army) Rules 1997, SI 1997/169, r 60, Sch 2; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 60, Sch 2; or the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 51, Sch 2.

7 As to the Judge Advocate General see paras 446-447 post. In relation to naval courts-martial, notice must be served on the judge advocate: see the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 51(2).

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 60(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 60(2); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 51(2). Where the court gives leave for a witness under the age of 14 to give evidence through a live television link, the witness must be accompanied by a person acceptable to the court and, unless the court otherwise directs, by no other person: Courts-Martial (Army) Rules 1997, SI 1997/169, r 60(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 60(3); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 51(3).

9 See the Standing Civilian Courts Order 1997, SI 1997/172, art 60. The application must be made as soon as is practicable after the opening of proceedings: see art 60.

10 This issue is decided by the judge advocate since this is a procedural matter: see the Army Act 1955 s 83ZF(5), (6) (as added); the Air Force Act 1955 s 83ZF(5), (6) (as added); and para 367 ante.

11 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 29(1); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 29(1); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 29(1).

12 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 29(2); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 29(2); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 29(2).

13 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 35(1), (2); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 35(1), (2); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 35(1), (2).

14 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 37; the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 37; and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 37. As to the preliminary hearing see paras 360, 366 ante.

UPDATE

384 Television links in respect of witnesses in a country other than that in which the service court is sitting

NOTE 1--Definition of 'service courts' further amended: Armed Forces Act 2006 Sch 16 para 115.

NOTE 2--Criminal Justice Act 1988 s 32(2) repealed: Youth Justice and Criminal Evidence Act 1999 Sch 6. SI 1996/2592 revoked SI 2009/994.

NOTES 5-8--SI 1997/169 replaced: Courts-Martial (Army) Rules 2007, SI 2007/3442. SI 1997/170 replaced: Courts-Martial (Royal Navy) Rules 2007, SI 2007/3443. SI 1997/171 replaced: Courts-Martial (Royal Air Force) Rules 2007, SI 2007/3444.

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385. Evidence given by children by video and television link.

The principles governing the giving of evidence by children by video recording are the same for trials in service courts¹ as for trials on indictment². The evidence of the child stands as evidence in chief and cross-examination is by live television link³. The offences for which video recording and live television link can be used include all those offences where evidence can go before the court by video or live television link in the civil courts but the list of offences is extended for service courts⁴. Leave of the court is required for a video recording to be used as evidence⁵ and for the live television link to be used for cross-examination⁶. Once leave has been given for evidence to be given by video recording, a child witness may not be examined in chief on any matter which in the opinion of the court has been dealt with adequately in his recorded testimony⁷. When leave has been granted for a child to give evidence by live television link, he must give his evidence by that means unless the court gives leave⁸.

At courts-martial any application by the prosecution or defence for evidence to be given by video recording must be made as soon as practicable after the commencement of the trial⁹. At courts-martial the application cannot be made without leave unless, at least 28 days prior to the date appointed for the trial, the party making the application serves notice¹⁰ on every other party, the Judge Advocate General¹¹ and the court administration officer, together with a copy of the video evidence sought to be admitted¹². Similar provisions apply to the standing civilian court¹³.

In the summary appeal court no application may be made without leave unless, not less than seven days before the commencement of the hearing, notice has been served¹⁴.

The judge advocate will normally sit alone to hear submissions and give leave if appropriate at a court-martial¹⁵. In the summary appeal court there is no power to sit alone except at a preparatory hearing, but the decision is nonetheless for the judge advocate alone in exercise of his power to rule and direct on questions of law (including practice and procedure)¹⁶.

1 For the meaning of 'service courts' see para 384 note 1 ante.

2 See para 375 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414 et seq.

3 See paras 375, 384 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414 et seq.

4 See the Criminal Justice Act 1988 ss 32(2), 32A(1)(a) (s 32A as added); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414 et seq. The list of offences is extended for service courts to include: (1) an offence under the Army Act 1955 (other than s 70 (as amended; prospectively further amended)), the Air Force Act 1955 (other than s 70 (as amended; prospectively further amended)) and the Naval Discipline Act 1957 (other than s 42 (as amended; prospectively further amended)) (see para 422 post) which involves an assault on, or injury or a threat of injury to, a person, or cruelty to a person under 16 years of age; (2) an offence under the Army Act 1955 (other than s 70 (as amended; prospectively further amended)), the Air Force Act 1955 (other than s 70 (as amended; prospectively further amended)) and the Naval Discipline Act 1957 (other than s 42 (as amended; prospectively further amended)) which involves sexual or indecent behaviour; and (3) an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of an offence where a television link could be used for the substantive offence: see the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996, SI 1996/2592, art 2, Schedule.

5 See the Criminal Justice Act 1988 s 32A(2) (as added); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (Reissue) para 1170.

6 See *ibid* s 32(1) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (Reissue) para 1169.

7 See *ibid* s 32A(5)(b) (as added and amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (Reissue) para 1170.

8 See *ibid* s 32(2A), (2B) (as added); and the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996, SI 1996/2592, art 2, Schedule.

9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 61(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 61(1); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 52(1).

10 *Ie* on the form provided in the Courts-Martial (Army) Rules 1997, SI 1997/169, r 61, Sch 2; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 61, Sch 2; or the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 52, Sch 2.

11 As to the Judge Advocate General see paras 446-447 *post*. In relation to naval courts-martial, notice must be served on the judge advocate: Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 52(2). As to the judge advocate see para 453 *post*.

12 Courts-Martial (Army) Rules 1997, SI 1997/169, r 61(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 61(2); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 52(2).

13 See the Standing Civilian Courts Order 1997, SI 1997/172, art 61.

14 See the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 29(3); the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 29(3); and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 29(3).

15 *Ie* under the Courts-Martial (Army) Rules 1997, SI 1997/169, r 43(1)(b); the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 30(1)(a); or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 43(1)(b).

16 See the Army Act 1955 ss 83ZF(5), (6); the Air Force Act 1955 ss 83ZF(5), (6); and the Naval Discipline Act 1957 s 52FL(5), (6) (all added by the Armed Forces Discipline Act 2000 s 19(1), (2)).

UPDATE

385 Evidence given by children by video and television link

TEXT AND NOTES 4, 5, 7, 8--Criminal Justice Act 1988 ss 32(2), 32A repealed: Youth Justice and Criminal Evidence Act 1999 Sch 6.

TEXT AND NOTES 9-12--Revoked: SI 2006/2889, SI 2006/2891.

Provision for the protection of child and other vulnerable witnesses is now made by the Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) Rules 2009, SI 2009/2100. The Youth Justice and Criminal Evidence Act 1999 Pt 2 Chs 1-3, 5 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1440 *et seq*), which makes further provision relating to the protection of child and other vulnerable witnesses, applies, with modifications, to service courts (Youth Justice and Criminal Evidence Act 1999 (Application to Service courts) Order 2009, SI 2009/2083.

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386. Ascertainment of age.

Where, for the purposes of any provision regulating the powers of a court-martial¹, the age of any person at any time is material², his age at the material time must be deemed to be, or to have been, that which appears to the court, after considering any available evidence, to be or to have been his age at that time³.

Where it appears to the standing civilian court that any accused was or may have been under 17 years of age at the date when the offence with which the accused is charged is alleged to have been committed, it must before arraignment obtain evidence of his age, in order to satisfy itself that the court is properly constituted⁴.

1 In any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957: see the Army Act 1955 s 198C (added as s 198A by the Armed Forces Act 1976 s 22, Sch 9 para 4; and renumbered as s 198C by the Armed Forces Act 1981 s 9(2)); the Air Force Act 1955 s 198C (added as s 198A by the Armed Forces Act 1976 Sch 9 para 4; and renumbered as s 198C by the Armed Forces Act 1981 s 9(2)); and the Naval Discipline Act 1957 s 129E (added by the Armed Forces Act 1976 Sch 9 para 11).

2 Provisions by which a person's age may be material include the Army Act 1955 s 71A(1), (3), (4) (as added and amended), s 71AA (as added and amended), s 209(3)(a)(ii), (iii) (as substituted and amended), s 209(3)(ab) (as added), Sch 5A (as added and amended); the Air Force Act 1955 ss 71A(1), (3), (4) (as added and amended), s 71AA (as added and amended), s 209(3)(a)(ii), (iii) (as added and amended), s 209(3)(ab) (as added), Sch 5A (as added and amended); and the Naval Discipline Act 1957 s 43A(1), (3), (4) (as added and amended), s 43AA (as added and amended), s 118(3), Sch 4 para 1(ii), Sch 4A (as added and amended). These provisions deal with the application of the service Acts to young offenders and juveniles.

3 See the Army Act 1955 s 198C (as added and renumbered: see note 1 supra); the Air Force Act 1955 s 198C (as added and renumbered: see note 1 supra); and the Naval Discipline Act 1957 s 129E (as added: see note 1 supra).

4 See the Armed Forces Act 1976 s 6(17), Sch 3 para 12 (as amended) (see para 522 post); and the Standing Civilian Courts Order 1997, SI 1997/172, art 36. The court must be properly constituted in accordance with the Armed Forces Act 1976 s 6 (as amended): see para 520 post.

UPDATE

386 Ascertainment of age

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

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387. Proof of previous proceedings.

Where a person subject to the Naval Discipline Act 1957 or to military or air force law¹ has been tried before a civil court², a certificate as to the outcome of that trial, signed by the proper officer of the court³, is evidence, for the purposes of that Act or of the Army Act 1955 or the Air Force Act 1955⁴, of the matters stated in it⁵.

In any court, civil or criminal, and whether in the United Kingdom⁶ or any colony⁷, the original proceedings of a court-martial⁸, purporting to be signed, in the case of a naval court-martial by the judge advocate⁹, or in the case of an army or air force court-martial by the president of the court¹⁰, and being in the custody of any person having the lawful custody of them¹¹, are admissible in evidence on production from that custody¹².

A document purporting to be a copy of the original proceedings of a court-martial¹³, or of any part of those proceedings, is similarly admissible as evidence of the contents of the proceedings, or of the part to which it relates, if certified as a true copy by or on behalf of a Secretary of State (in the case of a naval court-martial) or of the Judge Advocate General (in the case of an army or air force court-martial) or by any other person having the lawful custody of the proceedings¹⁴.

On the retrial of any person by court-martial, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial¹⁵, and in accordance with certain conditions¹⁶, be read in evidence, and may be so read without further proof if it forms part of the original proceedings of the original court-martial or a copy of it, and those proceedings are, or that copy is, admissible as evidence¹⁷.

1 This includes a civilian to whom the Naval Discipline Act 1957 applies by virtue of s 118 (as amended) (see para 311 ante) or to whom the Army Act 1955 or the Air Force Act 1955 applies by virtue of the Army Act 1955 s 209(1), (2) (as amended) or the Air Force Act 1955 s 209(1), (2) (as amended): Naval Discipline Act 1957 s 118(3), Sch 4 para 5 (added by the Armed Forces Act 1976 s 22(5), Sch 9 para 14); Army Act 1955 s 209(4B) (added by the Armed Forces Act 1976 Sch 9 para 7); Air Force Act 1955 s 209(4B) (added by the Armed Forces Act 1976 Sch 9 para 7; and substituted by the Armed Forces Act 1981 s 10, Sch 1 para 2). See further para 311 ante. As to the persons subject to service law see paras 306-308 ante.

2 For the meaning of 'civil court' see para 57 note 2 ante.

3 'Proper officer' means: (1) in relation to a court of summary jurisdiction in England and Wales, the justices' chief executive for the court; and (2) in relation to any other court, the clerk of the court, his deputy or any other person having the custody of the records of the court: Army Act 1955 s 199(4) (substituted by the Access to Justice Act 1999 s 90(1), Sch 13 paras 16, 18(1), (3)); Air Force Act 1955 s 199(4) (substituted by the Access to Justice Act 1999 Sch 13 paras 19, 21(1), (3)); Naval Discipline Act 1957 s 129B(4) (s 129B added by the Armed Forces Act 1971 s 57(1); the Naval Discipline Act 1957 s 129B(4) substituted by the Access to Justice Act 1999 Sch 13 paras 22, 24(1), (3)). See further COURTS. A document purporting to be such a certificate and to be signed by the proper officer of the court is deemed to be such a certificate unless the contrary is shown: Army Act 1955 s 199(3) (amended by the Access to Justice Act 1999 Sch 13 paras 16, 18(1), (2)); Air Force Act 1955 s 199(3) (amended by the Access to Justice Act 1999 Sch 13 paras 19, 21(1), (2)); Naval Discipline Act 1957 s 129B(3) (as so added; and amended by the Access to Justice Act 1999 Sch 13 paras 22, 24(1), (2)).

4 Such a certificate is also admissible in evidence in the proceedings of a standing civilian court: see the Armed Forces Act 1976 s 6(17), Sch 3 para 12(1), (3) (Sch 3 para 12(1) amended by the Armed Forces Act 1996 s 5, Sch 1 para 103(8)(a)); and the Standing Civilian Courts Order 1997, SI 1997/172, art 91, Sch 4. See also para 522 post.

5 Army Act 1955 s 199(1) (amended by the Access to Justice Act 1999 Sch 13 paras 16, 18(1), (2)); Air Force Act 1955 s 199(1) (amended by the Access to Justice Act 1999 Sch 13 paras 19, 21(1), (2)); Naval Discipline Act 1957 s 129B(1) (as added (see note 3 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 22, 24(1), (2)). It is further provided that the certificate may state any or all of the following matters: (1) the offence; (2) the result of the trial; (3) the judgment or order of the court; and (4) any other specified offences taken into consideration: Army Act 1955 s 199(1) (as so amended); Air Force Act 1955 s 199(1) (as so amended); Naval Discipline Act 1957 s 129B(1) (as so added and amended). The proper officer of the court, if required by the commanding officer of the person in question or any other officer, must furnish the certificate and must be paid such fee as may be prescribed by regulations made by the Secretary of State: Army Act 1955 s 199(2) (amended by the Access to Justice Act 1999 Sch 13 paras 16, 18(1), (2)); Air Force Act 1955 s 199(2) (amended by the Access to Justice Act 1999 Sch 13 paras 19, 21(1), (2)); Naval Discipline Act 1957 s 129B(2) (as added (see note 3 supra); and amended by the Access to Justice Act 1999 Sch 13 paras 22, 24(1), (2)). Such regulations do not constitute statutory instruments and are not recorded in this work. As to the Secretary of State see para 2 ante.

6 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

7 As to the meaning of 'colony' see para 20 note 4 ante. These provisions also refer to British protectorates and to territories administered by the United Kingdom government under the United Nations trusteeship system: see the Army Act 1955 s 217(1); the Air Force Act 1955 s 215(1); the Naval Discipline Act 1957 s 127(1); and para 10 ante. Note that there are no longer any protectorates or trust territories. See further para 20 ante.

8 This applies also to a standing civilian court with regard to evidence of the documents specified in the Standing Civilian Courts Order 1997, SI 1997/172, art 88, and substituting a reference to the magistrate for the reference to the president of the court which appears in the Army Act 1955 s 200(1) and the Air Force Act 1955 s 200(1) (see the text to note 10 infra): see the Armed Forces Act 1976 s 6(17), Sch 3 para 12(1), (3) (as amended: see note 4 supra); and the Standing Civilian Courts Order 1977, SI 1997/172, arts 89, 91, Sch 4. See also para 522 post.

9 As to the judge advocate see para 453 post.

10 As to the president of the court see para 482 post.

11 Records of the proceedings of army and air force courts-martial are normally in the custody of the Judge Advocate General, by whom they are required to be retained for five years in respect of army and air force courts-martial: see the Army Act 1955 s 141(1) (as amended); the Air Force Act 1955 s 141(1) (as amended); and para 447 post. As to the Judge Advocate General see paras 446-447 post. Records of naval courts-martial are normally in the custody of the Defence Council: see the Naval Discipline Act 1957 s 66 (as amended); and para 472 post. As to the Defence Council see para 2 ante. The proceedings of standing civilian courts are normally in the custody of the Judge Advocate General: see the Standing Civilian Courts Order 1997, SI 1997/172, art 89.

12 Army Act 1955 s 200(1), (3); Air Force Act 1955 s 200(1), (3); Naval Discipline Act 1957 s 129C(1), (3) (s 129C added by the Armed Forces Act 1971 s 57(1)).

13 This applies also to a standing civilian court: see note 8 supra.

14 Army Act 1955 s 200(2); Air Force Act 1955 s 200(2); Naval Discipline Act 1957 s 129C(2) (as added: see note 12 supra).

15 I.e. the court-martial conducting the retrial. The judge advocate rules on all matters of law, including practice and procedure: see paras 453, 484 post.

16 I.e. either: (1) by agreement between the prosecution and the defence; or (2) if the judge advocate is satisfied that the witness is dead, or unfit to give evidence or to attend to do so, or that all reasonable efforts to find him or to secure his attendance have been made without success, or that the exigencies of the service render his attendance impracticable: Courts-Martial (Appeals) Act 1968 s 20(6), Sch 1 paras 1(a), (b), 3(a), (b), 5(a), (b).

17 Ibid Sch 1 paras 1, 3, 5 (Sch 1 para 1 amended by the Armed Forces Act 1971 s 57(2)).

UPDATE

387 Proof of previous proceedings

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

NOTE 3--Head (2) amended: Courts Act 2003 Sch 8 paras 95-97.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/388. Admissible evidence as to spent convictions.

388. Admissible evidence as to spent convictions.

Certain provisions of the Rehabilitation of Offenders Act 1974¹ have a bearing upon the evidence which is admissible in courts-martial and other service disciplinary proceedings² under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. The practice is that no oral reference may be made to spent convictions in open court at a court-martial, or before the summary appeal court either before or after the finding, without the leave of the judge advocate³, which is not to be given unless the interests of justice so require. Where it is appropriate for the court to take into account previous convictions, whether spent or unspent, in deciding upon sentence, the court should see them, but any unnecessary indication to the public or the press of the existence of spent convictions should be avoided; accordingly, references to such convictions in documents handed to the court are not to be read in open court without leave⁴. The rehabilitation periods are the same as those relating to sentences passed by civilian courts but provision is made for specifically service sentences⁵.

1 As to the purposes and general effect of the Rehabilitation of Offenders Act 1974 see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq. As to its bearing upon admissibility of evidence in criminal, service and certain other types of proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (Reissue) para 1078 et seq. See also paras 161, 215-216 ante.

2 Findings of guilty and punishments awarded in service disciplinary proceedings are expressly declared to be equivalent to convictions and sentences for the purposes of the Rehabilitation of Offenders Act 1974: see s 2(1) (amended by the Armed Forces Act 1976 s 22(5), Sch 9 para 20(1); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III); and para 216 ante. For the meaning of 'service disciplinary proceedings' see para 216 note 1 ante. The proceedings of standing civilian courts are service disciplinary proceedings, and the Rehabilitation of Offenders Act 1974 s 2 (as amended) extends to civilians found guilty in such proceedings: see s 2(5) (amended by the Armed Forces Act 1976 Sch 9 para 20(3)); and para 216 ante.

3 As to the judge advocate see paras 453, 484 post.

4 Service courts follow the spirit of the practice note issued by the Lord Chief Justice in respect of the Crown Court: see *Practice Note* [1975] 2 All ER 1072, sub nom *Practice Direction (Crime: Spent Convictions)* [1975] 1 WLR 1065.

5 See the Rehabilitation of Offenders Act 1974 s 5, Tables A, B (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 670 et seq. The specifically service sentences which are currently available and the rehabilitation periods in respect of them are: dismissal with disgrace (10 years); dismissal (7 years); service detention (5 years); a custodial order of more than six months (7 years); a custodial order of less than six months (3 years): see s 5, Tables A, B (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 671-672. The sentences of cashiering and discharge with ignominy are no longer available to a court-martial. The rehabilitation period where such a sentence is passed is 10 years: see s 5, Table A; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 671.

UPDATE

388 Admissible evidence as to spent convictions

NOTE 2--Rehabilitation of Offenders Act 1974 s 2(5) further amended, s 2(6) added: Armed Forces Act 2006 Sch 16 para 64.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/389. Evidence on navigational matters.

389. Evidence on navigational matters.

Special provisions made in relation to the Royal Navy, relating to evidence on navigational matters, have been repealed¹, and the general rules relating to the admissibility of expert evidence now apply².

¹ See the Naval Courts-Martial General Orders (Royal Navy) 1991, SI 1991/2737, art 71 (repealed by SI 1997/170).

² See CIVIL PROCEDURE vol 11 (2009) PARA 835 et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(1) GENERAL PROVISIONS AS TO DISCIPLINE/ (ix) Evidence in Service Disciplinary Proceedings/390. Authentication of orders and determinations in the army and air force.

390. Authentication of orders and determinations in the army and air force.

Unless any rules or regulations made under the Army Act 1955 or the Air Force Act 1955 expressly provide otherwise, any order or determination which is required or authorised to be made under either of those Acts by any military, air force or naval officer or authority may be signified under the hand of any officer authorised to do so¹. Any instrument signifying any such order or determination, and purporting to be signed by an officer stated in the instrument itself to be so authorised, is deemed to be signed by an officer so authorised, unless the contrary is proved².

1 Army Act 1955 s 223; Air Force Act 1955 s 221. The effect of this provision is that, unless there is a rule or regulation which specifically requires a document expressing some order or determination to be signed personally by the authority whose duty it is to issue that order or determination, it may be signed on behalf of that authority by an officer authorised to sign it.

2 Army Act 1955 s 223; Air Force Act 1955 s 221. The authority of the officer authorised to sign the document on another's behalf must be 'stated therein', ie on the face of the document (eg 'A Brown, Captain and adjutant, authorised to sign on behalf of the Commanding Officer, 1st Battalion, the Loamshire Regiment').

UPDATE

390 Authentication of orders and determinations in the army and air force

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(i) The Scope of the Code/391. What the code contains.

(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS

(i) The Scope of the Code

391. What the code contains.

Persons who are subject to naval discipline, military law or air force law¹ are thereby rendered subject to a code of offences and punishments contained in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, in virtually identical terms. The range of the offences triable, and the range and limits of the punishments which can be awarded, differ according to whether an offence is dealt with by court-martial or by some other tribunal or authority under one or other of the service discipline Acts², the status of the accused³ or (if he is a member of the armed forces) his rank, and also (so far as the punishments are concerned) his age⁴. In this title, unless otherwise indicated, any punishment specified for an offence is the maximum which can be awarded by a court-martial to an adult offender who is a member of the armed forces⁵.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the service discipline Acts see para 302 ante. As to the range of offences which may be tried by court-martial under the service discipline Acts, and the punishments which may be awarded by such courts, see para 392 et seq post. As to the powers of summary trial available to naval officers see para 348 ante (offences triable); and as to the powers of summary disposal possessed by commanding officers and appropriate superior authorities in the army and air force see para 353 et seq ante. As to the summary appeal court see para 359 et seq ante. As to the standing civilian court see para 520 et seq post.

3 Ie whether he is a member of the armed forces or a civilian. As to the range of offences for which a civilian may be tried by court-martial see para 311 ante; and for the punishments which a civilian so tried and found guilty may receive see para 430 post.

4 As to the treatment of juveniles see para 431 et seq post.

5 For most of the offences dealt with in para 392 et seq post, each of the service discipline Acts specifies a maximum punishment which may be awarded, and also sanctions the award of any punishment, less than the maximum, which appears in the scale of punishments which are permissible under the Act in question. The Army Act 1955 and the Air Force Act 1955 refer to this range of punishments as 'any less punishment provided by this Act'; the Naval Discipline Act 1957 describes them as 'any less punishment authorised by this Act'. The difference in phraseology does not appear to have any significance.

UPDATE

391 What the code contains

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/392. Misconduct in action.

(ii) Offences triable under the Service Discipline Acts

392. Misconduct in action.

It is an offence for any person subject to naval discipline, military law or air force law¹, being in the presence or vicinity of the enemy², or being engaged in any action or operation against the enemy, or being under orders to be prepared for any action or operation by or against the enemy:

- 323 (1) to fail to use his utmost exertions to carry into execution the lawful orders of his superior officers³;
- 324 (2) to sleep, or, without having been regularly relieved, to leave any place where it is his duty to be, while on guard duty and posted or ordered to patrol, or while on watch⁴;
- 325 (3) to behave so as to show cowardice, or to induce⁵ another person who is a member of Her Majesty's forces⁶, or of a force co-operating with them, so to behave while in the presence or vicinity of the enemy or engaged in any action or operation against the enemy or under orders to be prepared for any action or operation by or against the enemy⁷; or
- 326 (4) to use words likely to cause despondency or unnecessary alarm⁸.

A person guilty of any of any of these offences is liable to imprisonment or any less punishment provided for or authorised⁹.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the meaning of 'enemy' see para 305 note 1 ante.

3 Army Act 1955 s 24(2)(a) (s 24 substituted by the Armed Forces Act 1971 s 2(1)); Air Force Act 1955 s 24(2)(a) (s 24 substituted by the Armed Forces Act 1971 s 2(1), (2)); Naval Discipline Act 1957 s 2(2)(a) (s 2 substituted by the Armed Forces Act 1971 s 2(1), (3)). For the meaning of 'superior officer' see para 400 note 4 post; definition applied, except in relation to naval discipline, by the Army Act 1955 s 24(4) (as so substituted) and the Air Force Act 1955 s 24(4) (as so substituted).

4 Army Act 1955 s 24(2)(b); Air Force Act 1955 s 24(2)(b); Naval Discipline Act 1957 s 2(2)(b) (all as substituted: see note 3 supra). 'On watch' is not statutorily defined, but seems most likely to apply in a nautical context and not to extend to watch keepers in operations rooms and the like. For the corresponding offence in relation to persons not engaged in action or operations or in the presence or vicinity of the enemy see para 396 post.

5 To amount to inducement, the behaviour of the accused must be proved to have been successful in causing the other party to show cowardice; failing proof of this, a conviction for an attempt to commit the offence is possible: see the Army Act 1955 s 98(2); the Air Force Act 1955 s 98(2); and the Naval Discipline Act 1957 s 68(1).

6 As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

7 Army Act 1955 s 24(2)(c); Air Force Act 1955 s 24(2)(c); Naval Discipline Act 1957 s 2(2)(c) (all as substituted: see note 3 supra).

8 Army Act 1955 s 24(2)(d); Air Force Act 1955 s 24(2)(d); Naval Discipline Act 1957 s 2(2)(d) (all as substituted: see note 3 supra).

9 Army Act 1955 s 24(3) (as substituted (see note 3 supra); and amended by the Armed Forces Act 2001 s 34, Sch 6 Pt 4 para 14); Air Force Act 1955 s 24(3) (as substituted (see note 3 supra); and amended by the Armed Forces Act 2001 Sch 6 Pt 4 para 14); Naval Discipline Act 1957 s 2(3) (as substituted (see note 3 supra); and amended by the Armed Forces Act 2001 Sch 6 Pt 4 para 19). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 24(3) (as so substituted and amended); Air Force Act 1955 s 24(3) (as so substituted and amended); Naval Discipline Act 1957 s 48(1). See para 422 post. There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

392 Misconduct in action

TEXT AND NOTES--See now the Armed Forces Act 2006 s 2. A person guilty of an offence under s 2 is liable to any punishment mentioned in s 164(1) (see PARA 424), and any sentence of imprisonment imposed in respect of the offence may be for life: s 2(7).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/393. Surrendering, abandonment and assisting the enemy.

393. Surrendering, abandonment and assisting the enemy.

It is an offence for any person subject to naval discipline, military law or air force law¹ without lawful excuse²:

- 327 (1) to surrender any place or thing to the enemy³; or
- 328 (2) to abandon any place or thing which it is his duty to defend against, or prevent from falling into the hands of, the enemy⁴.

It is also an offence for such a person knowingly and without lawful excuse:

- 329 (a) to communicate with, or give intelligence to, the enemy⁵;
- 330 (b) to fail to make known to the proper authority any information received by him from the enemy⁶;
- 331 (c) to furnish the enemy with supplies of any description⁷;
- 332 (d) having been captured by the enemy, to serve with or aid him⁸ in the prosecution of hostilities or of measures likely to influence morale, or in any other manner whatsoever not authorised⁹ by international usage¹⁰;
- 333 (e) having been captured, to fail to take, or to prevent or discourage any other person subject to service law¹¹ from taking, any reasonable steps available to himself or that other person to rejoin Her Majesty's service¹²; or
- 334 (f) to harbour or protect an enemy other than a prisoner of war¹³.

A person guilty of any of any of these offences is liable to imprisonment or any less punishment provided for or authorised¹⁴.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 The fact that a person acts in good faith does not in itself constitute a lawful excuse: *Winkle v Wiltshire* [1951] 1 KB 684, [1951] 1 All ER 479, DC. In deciding whether the surrender or abandonment was without lawful excuse, it is the practice of service courts to draw on their service experience in determining what course of action the service is entitled to expect from a person of the rank and experience of the accused in the circumstances prevailing at the time.

3 Army Act 1955 s 24(1)(a) (ss 24, 25 substituted by the Armed Forces Act 1971 s 2(1)); Air Force Act 1955 s 24(1)(a) (ss 24, 25 substituted by the Armed Forces Act 1971 s 2(1), (2)); Naval Discipline Act 1957 s 2(1)(a) (ss 2, 3 substituted by the Armed Forces Act 1971 s 2(1), (3)). As to the meaning of 'enemy' see para 305 note 1 ante.

4 Army Act 1955 s 24(1)(b); Air Force Act 1955 s 24(1)(b); Naval Discipline Act 1957 s 2(1)(b) (all as substituted: see note 3 supra).

5 Army Act 1955 s 25(1)(a); Air Force Act 1955 s 25(1)(a); Naval Discipline Act 1957 s 3(1)(a) (all as substituted: see note 3 supra). To establish these offences, the information must be proved to have actually reached the enemy, and to have been communicated or given intentionally by the accused, as opposed to its having reached the enemy by chance. A person charged with an offence under the Army Act 1955 s 25(1)(a) (as substituted) or the Air Force Act 1955 s 25(1)(a) (as substituted) (but not the Naval Discipline Act 1957 s 3(1)(a) (as substituted)) may alternatively be convicted of the offence of disclosing information without authority under the Army Act 1955 s 60 (as substituted) or the Air Force Act 1955 s 60 (as substituted) (see para 412 post): see

the Army Act 1955 s 98(6), Sch 3 para 1 (amended by the Armed Forces Act 1971 s 77(1), Sch 4 Pt I); and the Air Force Act 1955 s 98(6), Sch 3 para 1 (amended by the Armed Forces Act 1971 Sch 4 Pt I). Although the power to make an alternative conviction does not exist in relation to persons under naval discipline, the alternative offence does (see the Naval Discipline Act 1957 s 34 (as substituted); and para 412 post).

6 Army Act 1955 s 25(1)(b); Air Force Act 1955 s 25(1)(b); Naval Discipline Act 1957 s 3(1)(b) (all as substituted: see note 3 supra).

7 Army Act 1955 s 25(1)(c); Air Force Act 1955 s 25(1)(c); Naval Discipline Act 1957 s 3(1)(c) (all as substituted: see note 3 supra).

8 For the power to forfeit the pay of a person who, while a prisoner of war, serves with or aids the enemy see the Army Act 1955 s 145(2)(c); the Air Force Act 1955 s 145(2)(c); and para 218 ante.

9 The forms and conditions of work which a prisoner of war may be compelled to do are prescribed and defined: see the Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949; TS 39 (1958), Cmnd 550) arts 49-57; and the Geneva Conventions Act 1957 Sch 3. See further WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 433 et seq.

10 Army Act 1955 s 25(1)(d); Air Force Act 1955 s 25(1)(d); Naval Discipline Act 1957 s 3(1)(d) (all as substituted: see note 3 supra). Note that the offences of serving with or aiding the enemy and failing to take any reasonable steps available to rejoin Her Majesty's service can only be committed by a person who has been captured by the enemy.

11 For the meaning of 'service law' see para 399 note 2 post.

12 Army Act 1955 s 25(1)(e); Air Force Act 1955 s 25(1)(e); Naval Discipline Act 1957 s 3(1)(e) (all as substituted: see note 3 supra).

13 Army Act 1955 s 25(1)(f); Air Force Act 1955 s 25(1)(f); Naval Discipline Act 1957 s 3(1)(f) (all as substituted: see note 3 supra).

14 Army Act 1955 ss 24(3), 25(2) (as substituted (see note 3 supra); and amended by the Armed Forces Act 2001 s 34, Sch 6 Pt 4 paras 14, 15); Air Force Act 1955 ss 24(3), 25(2) (as substituted (see note 3 supra); and amended by the Armed Forces Act 2001 Sch 6 Pt 4 paras 14, 15); Naval Discipline Act 1957 ss 2(3), 3(2) (as substituted (see note 3 supra); and amended by the Armed Forces Act 2001 Sch 6 Pt 4 paras 19, 20). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 24(3), 25(2) (as so substituted and amended); Air Force Act 1955 ss 24(3), 25(2) (as so substituted and amended); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

393 Surrendering, abandonment and assisting the enemy

TEXT AND NOTES--As to the offences of surrendering, abandonment and assisting the enemy, see now the Armed Forces Act 2006 ss 1, 2(1). 'Enemy' includes all persons engaged in armed operations against any of Her Majesty's forces or against any force co-operating with any of Her Majesty's forces, all pirates, and all armed mutineers, armed rebels and armed rioters: s 374. A person guilty of an offence under s 1 or 2 is liable to any punishment mentioned in s 164(1) (see PARA 424), and any sentence of imprisonment imposed in respect of the offence may be for life: see ss 1(3), 2(7).

TEXT AND NOTE 12--As to the offence of failure to escape, see now the Armed Forces Act 2006 s 5. A person guilty of an offence under s 5 is liable to any punishment mentioned

in s 164(1), and any sentence of imprisonment imposed in respect of the offence must not exceed 10 years: see s 5(4).

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394. Obstructing operations and interfering with equipment.

It is an offence for any person subject to naval discipline, military law or air force law¹:

- 335 (1) to do any act likely to imperil the success of any action or operation of Her Majesty's forces², or wilfully to delay or discourage on any pretext any such action or operation³; or
- 336 (2) knowingly and without lawful excuse to give any false air signal⁴ or to alter or interfere with any air signal or apparatus for giving such signal⁵;
- 337 (3) by any conduct⁶ of his intentionally to impair the efficiency or effectiveness of any equipment⁷ which is public or service property⁸; or
- 338 (4) by any conduct of his intentionally to interfere with or modify any message or other signal which is being transmitted by means of a telecommunication system⁹ directly or indirectly to or from such equipment¹⁰.

A person guilty of any of any of these offences is liable to imprisonment or any less punishment provided for or authorised¹¹.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

3 Army Act 1955 s 26(1) (s 26 substituted by the Armed Forces Act 1971 s 2(1)); Air Force Act 1955 s 26(1) (s 26 substituted by the Armed Forces Act 1971 s 2(1), (2)); Naval Discipline Act 1957 s 4(1) (s 4 substituted by the Armed Forces Act 1971 s 2(1), (3)).

4 For the meaning of 'air signal' see para 123 note 2 ante.

5 Army Act 1955 s 26(2); Air Force Act 1955 s 26(2); Naval Discipline Act 1957 s 4(2) (all as substituted: see note 3 supra).

6 'Conduct' includes any act or omission: Army Act 1955 s 44B(5) (s 44B added by the Armed Forces Act 1986 s 2(1)); Air Force Act 1955 s 44B(5) (s 44B added by the Armed Forces Act 1986 s 2(1), (2)(a)); Naval Discipline Act 1957 s 29B(5) (s 29B added by the Armed Forces Act 1986 s 2(1), (2)(b)).

7 'Equipment' includes any apparatus, any computer and any vessel, aircraft or vehicle: Army Act 1955 s 44B(5); Air Force Act 1955 s 44B(5); Naval Discipline Act 1957 s 29B(5) (all as added: see note 6 supra). For the meaning of 'aircraft' see paras 6 note 4, 21 note 13 ante. For these purposes, the efficiency or effectiveness of any equipment is impaired if, whether or not it is damaged, the equipment is made temporarily or permanently less efficient or effective either for all purposes or for a particular purpose for which it has been designed, adapted, adjusted or programmed: Army Act 1955 s 44B(4); Air Force Act 1955 s 44B(4); Naval Discipline Act 1957 s 29B(4) (all as so added).

8 Army Act 1955 s 44B(1)(a); Air Force Act 1955 s 44B(1)(a); Naval Discipline Act 1957 s 29B(1)(a) (all as added: see note 6 supra). A person may also be guilty of the lesser offence of impairing the efficiency or effectiveness of any such equipment by his conduct (Army Act 1955 s 44B(2)(a); Air Force Act 1955 s 44B(2)(a); Naval Discipline Act 1957 s 29B(2)(a) (all as so added)), although it is a defence for a person charged with such an offence in respect of any conduct likely to have a particular effect that, in the circumstances, his conduct was in all respects consistent with the exercise of reasonable care to avoid producing that effect (Army Act 1955 s 44B(3); Air Force Act 1955 s 44B(3); Naval Discipline Act 1957 s 29B(3) (all as so added)). As to the punishment of these offences see the text and note 11 infra. As to statutory provisions which cast the burden of proof on the accused (and the compatibility of such provisions with the presumption of innocence in the

Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2)) see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1370-1371. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 142.

For the purposes of the Army Act 1955 and the Air Force Act 1955, 'public property' means any property belonging to any department of Her Majesty's government in the United Kingdom or the government of Northern Ireland or held for the purposes of any such department: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1). For the purposes of the Naval Discipline Act 1957 'public or service property' means any such property and also property belonging to or connected with Her Majesty's naval forces, the naval forces of any Commonwealth country or naval forces raised under the law of any colony, or any part of any of those forces: s 135(1). For the purposes of each of the service Acts, 'property' includes real property in England and Wales or Northern Ireland, heritable property in Scotland, and property outside the United Kingdom in the nature of real property: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1). For the meaning of 'Her Majesty's naval forces' see para 7 ante. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante. As to the forces of a Commonwealth country see para 20 note 6 ante. As to the Commonwealth see COMMONWEALTH vol 13 (2009) PARA 701. As to the meaning of 'colony' see para 20 note 4 ante.

9 'Telecommunication system' has the same meaning as it has in the Telecommunications Act 1984 (see s 4; and TELECOMMUNICATIONS vol 97 (2010) PARA 60): Army Act 1955 s 44B(5); Air Force Act 1955 s 44B(5); Naval Discipline Act 1957 s 29B(5) (all as added: see note 6 supra).

10 Army Act 1955 s 44B(1)(b); Air Force Act 1955 s 44B(1)(b); Naval Discipline Act 1957 s 29B(1)(b) (all as added: see note 6 supra). A person may also be guilty of the lesser offence of interfering with or modifying any such message or signal by his conduct (Army Act 1955 s 44B(2)(b); Air Force Act 1955 s 44B(2)(b); Naval Discipline Act 1957 s 29B(2)(b) (all as so added)), although it is a defence for a person charged with such an offence in respect of any conduct likely to have a particular effect that, in the circumstances, his conduct was in all respects consistent with the exercise of reasonable care to avoid producing that effect (Army Act 1955 s 44B(3); Air Force Act 1955 s 44B(3); Naval Discipline Act 1957 s 29B(3) (all as so added)).

11 Army Act 1955 ss 26(3), 44B(1) (s 26(3) as substituted; s 44B(1) as added (see notes 3, 6 supra)); Air Force Act 1955 ss 26(3), 44B(1) (s 26(3) as substituted; s 44B(1) as added (see notes 3, 6 supra)); Naval Discipline Act 1957 ss 4(3), 29B(1) (s 4(3) as substituted; s 29B(1) as added (see notes 3, 6 supra)). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

A person guilty of the lesser offences of impairing the efficiency or effectiveness of public or service property (see note 8 supra) or interfering with or modifying a telecommunication message or signal (see note 9 supra) is liable for imprisonment for a term not exceeding two years or any less punishment which may be provided: Army Act 1955 s 44B(2); Air Force Act 1955 s 44B(2); Naval Discipline Act 1957 s 29B(2) (all as so added).

Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 26(3), 44B(1), (2) (as so substituted and added); Air Force Act 1955 ss 26(3) 44B(1), (2) (as so substituted and added); Naval Discipline Act 1957 s 48(1).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

394 Obstructing operations and interfering with equipment

TEXT AND NOTES--As to the offence of obstructing operations, see now the Armed Forces Act 2006 s 3. A person guilty of an offence under s 3 is liable to any punishment mentioned in s 164(1) (see PARA 424), and any sentence of imprisonment imposed in respect of the offence (1) if the offence relates to an action or operation against an enemy, may be for life; and (2) otherwise, must not exceed ten years: see s 3(4).

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395. Prize offences.

It is an offence for any person subject to naval discipline, military law or air force law¹, being in command of any of Her Majesty's ships or aircraft²:

- 339 (1) to fail to send to the High Court or some other prize court³ having jurisdiction in the case⁴ all the ship papers⁵ or aircraft papers⁶ found on board any ship or aircraft taken by him as prize⁷;
- 340 (2) unlawfully to make any agreement to ransom⁸ any ship, aircraft or goods taken as prize⁹;
- 341 (3) in pursuance of any unlawful ransoming agreement, or otherwise by collusion, to restore or abandon any ship, aircraft or goods so taken¹⁰;
- 342 (4) to ill-treat any person on board a ship or aircraft when taken as prize, or unlawfully to take from such a person anything in his possession¹¹;
- 343 (5) to remove out of any ship or aircraft so taken any goods not previously adjudged by a prize court to be lawful prize¹²; or
- 344 (6) to break bulk on board any ship or aircraft so taken, or detained in exercise of any belligerent right or under any enactment, with intent to steal anything in that ship or aircraft¹³.

A person guilty of any of any of these offences is liable to imprisonment or any less punishment provided for or authorised¹⁴.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the meanings of 'ship' and 'aircraft', and as to Her Majesty's ships and aircraft, see paras 6 notes 3, 4, 21 note 13 ante.

3 'Prize court' means a prize court within the meaning of the Naval Prize Act 1864: Army Act 1955 s 27(2) (ss 27, 28 added by the Armed Forces Act 1971 s 3(1)); Air Force Act 1955 s 27(2) (ss 27, 28 added by the Armed Forces Act 1971 s 3(1), (2)); Naval Discipline Act 1957 s 135(1). As to prize courts under the Naval Prize Act 1864 see s 3; and PRIZE vol 36(2) (Reissue) para 847.

4 As to the exercise of prize jurisdiction generally see PRIZE vol 36(2) (Reissue) para 847 et seq.

5 'Ship papers' has the same meaning as in the Naval Prize Act 1864: Army Act 1955 s 27(2) (as added: see note 3 supra); Air Force Act 1955 s 27(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 135(1). As to the meaning of 'ship papers' in the Naval Prize Act 1864 see s 2; and PRIZE vol 36(2) (Reissue) para 834.

6 'Aircraft papers' has the same meaning as in the Naval Prize Act 1864: Army Act 1955 s 27(2) (as added: see note 3 supra); Air Force Act 1955 s 27(2) (as added: see note 3 supra); Naval Discipline Act 1957 s 135(1). As to the meaning of 'aircraft papers' in the Naval Prize Act 1864 see s 2 (as amended); and PRIZE vol 36(2) (Reissue) para 834.

7 Army Act 1955 s 27(1)(a) (as added: see note 3 supra); Air Force Act 1955 s 27(1)(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 23(a). As to prize generally see PRIZE vol 36(2) (Reissue) para 801 et seq.

8 As to ransom see PRIZE vol 36(2) (Reissue) para 841.

9 Army Act 1955 s 27(1)(b) (as added: see note 3 supra); Air Force Act 1955 s 27(1)(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 23(b).

10 Army Act 1955 s 27(1)(c) (as added: see note 3 supra); Air Force Act 1955 s 27(1)(c) (as added: see note 3 supra); Naval Discipline Act 1957 s 23(c).

11 Army Act 1955 s 28(a) (as added (see note 3 supra); and amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2); Air Force Act 1955 s 28(a) (as added (see note 3 supra); and amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2); Naval Discipline Act 1957 s 24(a) (amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2).

12 Army Act 1955 s 28(b) (as added: see note 3 supra); Air Force Act 1955 s 28(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 24(b). Goods may be removed if it is for their safe keeping or for the necessary use and service of any of Her Majesty's forces or any forces co-operating with them: Army Act 1955 s 28(b) (as so added); Air Force Act 1955 s 28(a) (as so added); Naval Discipline Act 1957 s 24(b) (amended by the Armed Forces Act 1966 s 37(1), Sch 4). As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

13 Army Act 1955 s 28(c) (as added: see note 3 supra); Air Force Act 1955 s 28(c) (as added: see note 3 supra); Naval Discipline Act 1957 s 24(c) (amended by the Armed Forces Act 1981 s 15(1)).

14 Army Act 1955 ss 27(1), 28 (as added: see note 3 supra); Air Force Act 1955 ss 27(1), 28 (as added: see note 3 supra); Naval Discipline Act 1957 ss 23, 24 (amended by the Armed Forces Act 1971 s 3(3)). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 27(1), 28 (as so added); Air Force Act 1955 ss 27(1), 28 (as so added); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

395 Prize offences

TEXT AND NOTES--As to prize offences, see now the Armed Forces Act 2006 ss 37, 38. A person guilty of an offence under s 37 or 38 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see ss 37(4), 38(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/396. Offences by or in relation to sentries, persons on watch, etc.

396. Offences by or in relation to sentries, persons on watch, etc.

Any person subject to naval discipline, military law or air force law¹ who is on guard duty and posted or ordered to patrol, or is on watch², or is under orders to regulate traffic by land, water or air, who sleeps or, without being regularly relieved, leaves any place where it is his duty to be, commits an offence³. An offence is also committed by any person so subject who uses force against a member of Her Majesty's forces⁴, or of any forces co-operating with them, who is carrying out such guard or other duties⁵, or who by threat of force compels any such person to let him or any other person pass⁶.

A person guilty of any of any of these offences is liable to imprisonment or any less punishment provided for or authorised⁷.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to being 'on watch' see para 392 note 4 ante.

3 Army Act 1955 s 29(a) (s 29 substituted by the Armed Forces Act 1971 s 4(1)); Air Force Act 1955 s 29(a) (s 29 substituted by the Armed Forces Act 1971 s 4(1), (2)); Naval Discipline Act 1957 s 6(a) (s 6 substituted by the Armed Forces Act 1971 s 4(1), (3)). For the corresponding offence in relation to persons engaged in any action or operation or in the presence or vicinity of the enemy see para 392 ante.

4 As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

5 Army Act 1955 s 29(b); Air Force Act 1955 s 29(b); Naval Discipline Act 1957 s 6(b) (all as substituted (see note 3 supra); and amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2).

6 Army Act 1955 s 29(c); Air Force Act 1955 s 29(c); Naval Discipline Act 1957 s 6(c) (all as substituted: see note 3 supra).

7 Army Act 1955 s 29; Air Force Act 1955 s 29; Naval Discipline Act 1957 s 6 (all as substituted: see note 3 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 29 (as so substituted); Air Force Act 1955 s 29 (as so substituted); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

396 Offences by or in relation to sentries, persons on watch, etc

TEXT AND NOTES--As to the offence of using force against a sentry, see now the Armed Forces Act 2006 s 14. A person guilty of an offence under s 14 is liable to any

punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 14(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/397. Failure to attend for, and neglect of, duty.

397. Failure to attend for, and neglect of, duty.

It is an offence for any person subject to naval discipline, military law or air force law¹:

- 345 (1) to fail to attend² for any duty without reasonable excuse³;
- 346 (2) to leave any duty without being permitted to do so, without reasonable excuse⁴;
- 347 (3) to neglect to perform⁵ any duty⁶; or
- 348 (4) negligently⁷ to perform any duty⁸.

A person guilty of any of any of these offences is liable to imprisonment or any less punishment provided for or authorised⁹.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 To sustain a charge of failing to attend for a duty without reasonable excuse it is necessary to prove that the accused knew, or ought to have known, of the duty, eg because an order detailing him for it was duly posted, or because he was personally detailed for it. If a failure to attend for a duty occurs during a period of absence without leave, it would not be appropriate to prefer a charge of failing to attend as well as one of absence without leave. The provisions set out in this paragraph are apt for a case where only a short absence, involving the missing of a duty, is entailed, and the gravamen of the offence is the failure to attend and perform the specific duty and not the absence without leave.

3 Army Act 1955 s 29A(a) (s 29A added by the Armed Forces Act 1971 s 5(1)); Air Force Act 1955 s 29A(a) (s 29A added by the Armed Forces Act 1971 s 5(1), (2)); Naval Discipline Act 1957 s 7(a) (s 7 substituted by the Armed Forces Act 1971 s 5(1), (3)).

4 Army Act 1955 s 29A(a) (as added: see note 3 supra); Air Force Act 1955 s 29A(a) (as added: see note 3 supra); Naval Discipline Act 1957 s 7(a) (as substituted: see note 3 supra).

5 'Neglects to perform' must always involve the non-performance of the duty, which may occur wilfully or by carelessness or general slackness. It is submitted that in either case it entails a failure to perform a duty of which the person knows or ought to know: see *Re Hughes, Rea v Black* [1943] Ch 296 at 298, [1943] 2 All ER 269 at 271 per Simonds J. Neglect to perform a duty is distinct both from failing to attend for a duty and from negligently performing a duty; in a case of neglect to perform a duty the accused may have attended at the place of duty but not performed the duty; and whereas a charge of neglect to perform a duty connotes that the duty was, wilfully or otherwise, not performed, one of negligently performing a duty alleges that the duty was performed, but in a negligent manner.

6 Army Act 1955 s 29A(b) (as added: see note 3 supra); Air Force Act 1955 s 29A(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 7(b) (as substituted: see note 3 supra).

7 It is submitted that 'negligently' means with negligence in the common law sense, ie with a lack of the standard of care reasonably to be expected in all the circumstances: see *Alford v National Coal Board* [1952] 1 All ER 754, HL.

8 Army Act 1955 s 29A(b) (as added: see note 3 supra); Air Force Act 1955 s 29A(b) (as added: see note 3 supra); Naval Discipline Act 1957 s 7(b) (as substituted: see note 3 supra).

9 Army Act 1955 s 29A (as added: see note 3 supra); Air Force Act 1955 s 29A (as added: see note 3 supra); Naval Discipline Act 1957 s 7 (as substituted: see note 3 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 29A (as so added); Air Force Act 1955 s 29A (as so added); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

397 Failure to attend for, and neglect of, duty

TEXT AND NOTES--As to the offence of failure to attend for or perform duty, see now the Armed Forces Act 2006 s 15. A person guilty of an offence under s 15 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 15(3).

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398. Looting.

The offence of looting is committed by any person subject to naval discipline, military law or air force law¹ who:

- 349 (1) steals² from, or with intent to steal searches, anyone killed, wounded, captured in warlike operations³, or killed, wounded or detained in operations of Her Majesty's forces⁴ for the preservation of law and order or otherwise in aid of the civil authorities⁵; or
- 350 (2) steals any property left exposed or unprotected in consequence of any such operations⁶; or
- 351 (3) takes⁷, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy⁸.

The punishment for this offence is an unlimited term of imprisonment, or any less punishment provided for or authorised⁹.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 'Steals' has the same meaning as in the Theft Act 1968: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1) (definition substituted, in each case, by the Theft Act 1968 s 33(2), Sch 2 Pt I). For the meaning of 'steal' in the Theft Act 1968 see s 1(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 282.

3 'Warlike operations', although not defined in any of the three service discipline Acts, is obviously intended to have a wider connotation than the word 'war'. As to the service discipline Acts see para 302 ante.

4 As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

5 Army Act 1955 s 30(a) (amended by the Armed Forces Act 1971 s 6(1)(a)); Air Force Act 1955 s 30(a) (amended by the Armed Forces Act 1971 s 6(1)(a)); Naval Discipline Act 1957 s 5(a) (s 5 added by the Armed Forces Act 1971 s 6(2)).

6 Army Act 1955 s 30(b) (amended by the Armed Forces Act 1971 s 6(1)(b)); Air Force Act 1955 s 30(b) (amended by the Armed Forces Act 1971 s 6(1)(b)); Naval Discipline Act 1957 s 5(b) (as added: see note 5 supra). This provision is presumably aimed at members of the armed forces who ransack an area from which the inhabitants have fled without removing or securing their property. To establish the offence it has to be proved that the appropriation of the property does amount to theft, and this necessitates proof that the property was appropriated dishonestly. It is to be noted that the appropriation of another's property is not to be regarded as dishonest if it is done in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps: see the Theft Act 1968, s 2(1)(c); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 283.

7 'Takes' is a wider term than 'steals', and is not a technical one, and would cover eg a case where the prosecution was not able to prove an intent permanently to deprive the owner of his property, or that the accused had behaved dishonestly. This provision also affords a means of bringing within the scope of service discipline instances of the taking of property where charges of theft would fail because of the belief of the accused that the property taken was abandoned or it was in fact abandoned: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 283, 289.

8 Army Act 1955 s 30(c); Air Force Act 1955 s 30(c); Naval Discipline Act 1957 s 5(c) (as added: see note 5 supra). As to the meaning of 'enemy' see para 305 note 1 ante.

9 Army Act 1955 s 30; Air Force Act 1955 s 30; Naval Discipline Act 1957 s 5 (as added: see note 5 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 30; Air Force Act 1955 s 30; Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

398 Looting

TEXT AND NOTES--As to the offence of looting, see now the Armed Forces Act 2006 s 4.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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399. Mutiny and related offences.

'Mutiny' means a combination¹ between two or more persons subject to service law², or between persons two at least of whom are subject to service law:

- 352 (1) to overthrow or resist lawful authority in Her Majesty's forces³, or any forces co-operating with them, or in any part of Her Majesty's forces or of a co-operating force⁴;
- 353 (2) to disobey such authority in such circumstances as to make the disobedience subversive of discipline⁵, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy⁶; or
- 354 (3) to impede the performance of any duty or service⁷ in Her Majesty's forces or in any forces co-operating with them, or in any part of Her Majesty's forces or a co-operating force⁸.

Any person subject to naval discipline, military law or air force law⁹ who:

- 355 (a) takes part in a mutiny¹⁰;
- 356 (b) incites any person subject to service law to take part in a mutiny, whether actual or intended¹¹;
- 357 (c) knowing that a mutiny is taking place or is intended, fails to use his utmost endeavours to suppress or prevent it¹²; or
- 358 (d) with such knowledge fails to report without delay that the mutiny is taking place or is intended¹³,

is liable to an unlimited term of imprisonment or any lesser punishment provided for or authorised¹⁴.

There are also various offences relating to incitement to mutiny under the law of England and Wales applicable to persons not subject to military law¹⁵.

1 The essence of mutiny is the existence of a combination; it is a collective offence. Hence, to constitute mutiny, there must be at least two persons subject to service law joining in the combination, although they need not be subject to the same code of service law. However, if one person subject to service law combines with others not so subject, he will not be guilty of mutiny, whatever may be the object of the combination. Not every act of disobedience committed jointly by two or more persons subject to service law amounts to mutiny: it is necessary to prove that the combination is entered into with one of the objects set out in heads (1)-(3) in the text. It must be proved that there was collective insubordination with these objects. Simple insubordination by two or more men is insufficient: see *R v Grant* [1957] 2 All ER 694, [1957] 1 WLR 906, C-MAC. Even where a combination does amount to collective insubordination, it is not the practice of the service authorities to charge the offenders with mutiny unless the case is a serious one, because the offence is very grave.

2 'Service law' means military law, air force law or the Naval Discipline Act 1957: Army Act 1955 s 225(1) (definition added by the Armed Forces Act 1971 s 43, Sch 1 para 1(1), (11)); Air Force Act 1955 s 223(1) (definition added by the Armed Forces Act 1971 Sch 1 para 1(1), (11)); Naval Discipline Act 1957 ss 8, 135(1). As to the persons who are subject to service law see para 306 et seq ante.

3 As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

4 Army Act 1955 s 31(3)(a); Air Force Act 1955 s 31(3)(a); Naval Discipline Act 1957 s 8(a).

5 Although any disobedience must be prejudicial to discipline, not every instance of disobedience is subversive of discipline. 'Subvert' means turn upside down or overthrow, and to have this effect the disobedience must have a tendency to undermine or overthrow discipline.

6 Army Act 1955 s 31(3)(b); Air Force Act 1955 s 31(3)(b); Naval Discipline Act 1957 s 8(b). As to the meaning of 'enemy' see para 305 note 1 ante.

7 Eg a strike to prevent a duty being carried out. However, whether this would warrant a charge of mutiny must depend on the circumstances: see note 1 supra.

8 Army Act 1955 s 31(3)(c); Air Force Act 1955 s 31(3)(c); Naval Discipline Act 1957 s 8(c).

9 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

10 Army Act 1955 s 31(2) (amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 4); Air Force Act 1955 s 31(2) (amended by the Armed Forces Act 2001 Sch 7 Pt 4); Naval Discipline Act 1957 s 9(2) (amended by the Armed Forces Act 2001 Sch 7 Pt 4).

11 Army Act 1955 s 31(2); Air Force Act 1955 s 31(2); Naval Discipline Act 1957 s 9(2) (all as amended: see note 10 supra).

12 Army Act 1955 s 32(a); Air Force Act 1955 s 32(a); Naval Discipline Act 1957 s 10(a).

13 Army Act 1955 s 32(b); Air Force Act 1955 s 32(b); Naval Discipline Act 1957 s 10(b).

14 Army Act 1955 s 31(2) (as amended: see note 10 supra), s 32 (amended by the Armed Forces Act 2001 s 34, Sch 6 Pt 4 para 17); Air Force Act 1955 s 31(2) (as amended: see note 10 supra), s 32 (amended by the Armed Forces Act 2001 Sch 6 Pt 4 para 17); Naval Discipline Act 1957 s 9(2) (as amended: see note 10 supra), s 10 (amended by the Armed Forces Act 1971 s 77(1), Sch 4 Pt I; and by the Armed Forces Act 2001 s 38, Sch 7 Pt 4). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 31(2), 32 (as so amended); Air Force Act 1955 ss 31(2), 32 (as so amended); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

15 As to incitement generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 65 et seq.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

399 Mutiny and related offences

TEXT AND NOTES--As to the offences of mutiny and failure to suppress mutiny, see now the Armed Forces Act 2006 ss 6, 7. A person guilty of an offence under s 6 or 7 is liable to any punishment mentioned in s 164(1) (see PARA 424), and any sentence of imprisonment imposed in respect of the offence may be for life: see ss 6(4), 7(3).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/400. Insubordinate behaviour.

400. Insubordinate behaviour.

It is an offence for person subject to naval discipline, military law or air force law¹ to use or offer violence², or to use threatening or insubordinate language³, to his superior officer⁴. It is also an offence for any person subject to naval discipline to behave with contempt to his superior officer⁵.

A person guilty of any such offence is liable to an unlimited term of imprisonment or any lesser punishment provided for or authorised⁶. It is, however, a defence for a person charged with any of these offences to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was his superior officer⁷.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 Army Act 1955 s 33(1)(a) (amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2); Air Force Act 1955 s 33(1)(a) (amended by the Armed Forces Act 1986 s 4(1), Sch 2); Naval Discipline Act 1957 s 11(a) (s 11 substituted by the Armed Forces Act 1971 s 8(3); and the Naval Discipline Act 1957 s 11(a) amended by the Armed Forces Act 1986 s 4(1), Sch 2).

3 Army Act 1955 s 33(1)(b); Air Force Act 1955 s 33(1)(b); Naval Discipline Act 1957 s 11(b) (as substituted: see note 2 supra). Language need not be discourteous to be insubordinate if, in themselves or in the proved circumstances, the words used are objectively insubordinate. All threatening language used to a superior officer is insubordinate, but not all insubordinate language is threatening.

4 For the purposes of the Army Act 1955 s 33(1) (as amended) and the Air Force Act 1955 s 33(1) (as amended), 'superior officer', in relation to any person, means an officer, warrant officer or non-commissioned officer of the regular forces or air forces (as the case may be) of superior rank and includes an officer, warrant officer or non-commissioned officer of those forces of equal rank to the accused but of greater seniority and exercising authority as the accused's superior: see the Army Act 1955 s 33(2); Air Force Act 1955 s 33(2). For the meaning of 'regular forces' see para 191 ante. As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante. Thus it is not an offence to use or offer violence or use threatening or insubordinate language to a member of one of the armed forces other than the one to which the person charged belongs who is of superior rank or greater seniority than that person, unless the complainant is acting with, or is a member of a body of any of the armed forces (other than that to which the accused belongs) which is acting with, any body of the armed forces to which the accused belongs in accordance with the Army Act 1955 s 178 or the Air Force Act 1955 s 178 (see para 205 ante). Where the charge is of offering violence to a person of the same rank as the accused but of greater seniority, it is necessary to offer evidence to prove that the complainant was senior to the accused and held an appointment which gave him authority over the accused. For instance a senior lance corporal might be appointed a section commander and would then have authority over another lance corporal acting as second in command of the section.

In the Naval Discipline Act 1957, however, 'superior officer', in relation to any person, means an officer or a rating not below the rate of leading seaman, who is of rank or rate higher than that person or is senior to him in rank or rate: s 133(3) (amended by the Armed Forces Act 1971 s 43, Sch 1 para 2(4)). The Naval Discipline Act 1957 further provides that for these purposes any officer, warrant officer or non-commissioned officer of any of Her Majesty's military or air forces who is acting with any body of the naval forces, or is a member of a body of the military or air forces which is so acting, is to be treated and is to have the like powers of arrest (see s 45; and para 335 ante) as if he were a naval officer or rating of corresponding rank or rate: s 122(2) (amended by the Armed Forces Act 1971 s 77(1), Sch 4 Pt I; and by the Armed Forces Act 2001 s 17, Sch 1 para 16).

It will be noted that these provisions create several distinct offences, so that a charge which alleges more than one of them will be bad for duplicity, eg if it charges using both threatening and insubordinate language. A person charged under the Army Act 1955 s 33(1) (as amended) or the Air Force Act 1955 s 33(1) (as amended) with using violence to his superior officer may be found guilty of offering violence to him; and a person charged with using threatening language to his superior officer may be found guilty of using insubordinate language to

him: Army Act 1955 s 98(6), Sch 3 paras 3, 4 (Sch 3 para 3 amended by the Armed Forces Act 1986 s 16(1), Sch 2); Air Force Act 1955 s 98(6), Sch 3 paras 3, 4 (Sch 3 para 3 amended by the Armed Forces Act 1986 s 16(1), Sch 2). The Naval Discipline Act 1957 contains no corresponding provisions, but inasmuch as all the offences created by s 11 (as substituted and amended) appear to be of the same class and each carries the same punishment, it is submitted that the same result can be achieved as under those provisions of the Army Act 1955 and the Air Force Act 1955 by virtue of the Naval Discipline Act 1957 s 68(1)(b) (see para 469 ante). As to the powers of a court-martial to add or substitute charges at trial see the Courts-Martial (Army) Rules 1997, SI 1997/169, rr 48, 49; the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 39, 40; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 48, 49; and para 315 ante. The judge advocate deals with these issues as they are matters of law including practice and procedure for the purposes of the Army Act 1955 s 84B(3) (as added), the Air Force Act 1955 s 84B(3) (as added) (see para 484 post), and the Naval Discipline Act 1957 s 52FL(5) (as added) (see para 361 ante). The commanding officer or appropriate superior authority in the army or air force may amend or substitute the charge when dealing summarily: see the Army Act 1955 s 76B(3) (as added); the Air Force Act 1955 s 76B(3) (as added) (see para 356 ante); the Naval Discipline Act 1957 s 52B(3) (as added); and paras 348, 356 ante. There is no power to amend the charge should the matter go before the summary appeal court although that court has the power under the Army Act 1955 s 83ZG (as added), the Air Force Act 1955 s 83ZG (as added) (see para 368 ante), and the Naval Discipline Act 1957 s 52FM (as added) (see para 362 ante), in a case where the commanding officer or appropriate superior authority could validly have recorded a finding that another charge had been proved to substitute that finding even if it is for a different charge.

5 Naval Discipline Act 1957 s 11(b) (as substituted: see note 2 supra). To behave with contempt to a superior officer is construed in the Royal Navy as covering behaviour other than the use of insubordinate or threatening language, eg 'dumb insolence'. To behave with contempt to a superior officer is not in itself an offence in the army or air force although such behaviour may amount to the use of insubordinate language.

6 Army Act 1955 s 33(1); Air Force Act 1955 ss 33(1); Naval Discipline Act 1957 s 11 (as substituted: see note 2 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 33(1); Air Force Act 1955 s 33(1); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

7 Army Act 1955 s 33(1) (proviso); Air Force Act 1955 s 33(1) (proviso); Naval Discipline Act 1957 s 11 (proviso) (as substituted: see note 2 supra). As to statutory provisions which cast the burden of proof on the accused (and the compatibility of such provisions with the presumption of innocence in the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2)) see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1370-1371. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 142.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

400 Insubordinate behaviour

TEXT AND NOTES--As to misconduct towards a superior officer, see now the Armed Forces Act 2006 s 11.

NOTE 4--As to the powers of a court martial to add or substitute charges at trial see now the Armed Forces (Court Martial) Rules 2009, SI 2009/2041, rr 51-55.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/401. Disobedience to lawful command.

401. Disobedience to lawful command.

It is an offence for person subject to naval discipline or military or air force law¹ to disobey, whether wilfully or through neglect², any lawful command³, by whatever means communicated to him⁴.

A person guilty of any such offence is liable to an unlimited term of imprisonment or any lesser punishment provided for or authorised⁵.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 It is submitted that 'neglect' in this context means failing to do what a reasonable man in the position of the accused would have done in order to carry out the order.

3 To be lawful the command must not be contrary to domestic law, international law or local law save when a state of war exists in which case the local law of enemy states can be ignored, and the command must be justified by military, naval or air force law. A superior has no right, however, to give a command which does not relate to service duty or usage, or which has for its sole object the attainment of some private end. For instance, a command to attend a medical officer or a hospital for examination, or to submit to treatment (even involving anaesthesia or surgery, including inoculations and other injections) will be lawful, provided that what is to be done is necessary to restore or maintain the individual's efficiency and is reasonable in his case in all the circumstances. These include the pain and risk entailed, and the probable consequences of giving or withholding the treatment on the health or efficiency of the individual concerned, or on his availability for any duty which he is likely to be required to perform, and how serious the consequences would be if he were not so available. For example, to order a man against his will to submit to general anaesthesia or to undergo major surgery, or some form of therapy comparable to these in its risks or possible consequences, is a very grave step which would be lawful only in the most exceptional circumstances; on the other hand, to order him to submit to a routine inoculation will normally be lawful if failure to receive it will put him at risk of becoming unfit for duty or prevent him from being posted overseas.

A soldier ought not obey a command which is illegal.

As to the lawfulness or otherwise of orders to troops to carry out tasks in aid of the civil power in emergencies, and as to orders to troops temporarily employed in agricultural or other urgent work of national importance, see para 26 ante. The duties which members of the armed forces may be called upon to undertake as such include civil defence: see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 539 et seq.

4 Army Act 1955 s 34 (substituted by the Armed Forces Act 1971 s 8(2)); Air Force Act 1955 s 34 (substituted by the Armed Forces Act 1971 s 8(2)); Naval Discipline Act 1957 s 12 (substituted by the Armed Forces Act 1971 s 8(3)). These provisions relate to specific commands given on a particular occasion. As to the breach of standing or other orders of a continuing nature see para 402 post. There is no statutory requirement that the command should have been given by a superior officer of the accused: to be a lawful command, however, it must have been given by a person entitled to give it, eg a naval officer placed in charge of a specific operation owing to his special skills (see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para 0334), a soldier detailed to direct military traffic on a road or in a car park (see the Queen's Regulations for the Army 1975 para 2.018), or a civilian captain of an aircraft chartered to convey troops (see the Army Act 1955 s 177(2); and the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 4 para 118). In a case where bodies of the naval, military and air forces, or of any two of them, are acting in co-operation, lawful commands can be given, regardless of the service to which the giver or recipient of such a command belongs, to the same extent as the giver of the command could lawfully give it to a member of the same service as himself: see the Army Act 1955 s 178; the Air Force Act 1955 s 178; the Naval Discipline Act 1957 s 122; the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 3 para J0381; the Queen's Regulations for the Army 1975 para J2.041; the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 4 para J126; and para 205 ante.

5 Army Act 1955 s 34; Air Force Act 1955 ss 34; Naval Discipline Act 1957 s 12 (all as substituted: see note 4 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 34(1) (as so substituted);

Air Force Act 1955 s 34(1) (as so substituted); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

401 Disobedience to lawful command

TEXT AND NOTES--Provision as to the offence of disobedience of lawful commands is now made by the Armed Forces Act 2006 s 12. A person guilty of an offence under s 12 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed ten years: see s 12(2).

NOTE 5--A charge of disobedience to a lawful order can be based on the same facts as those surrounding a charge of being absent without leave: *R v Brown (prosecution appeal under Courts-Martial (Prosecution Appeals) Order 2006)* [2007] All ER (D) 352 (Oct), C-MAC.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/402. Disobedience to standing orders.

402. Disobedience to standing orders.

It is an offence, punishable with imprisonment for two years or any less punishment provided for or authorised¹, for any person subject to naval discipline or to military or air force law² to contravene or fail to comply with any provision known to him, or of which he might reasonably be expected to know³, of standing orders or other routine orders of a continuing nature⁴.

1 Army Act 1955 s 36(1); Air Force Act 1955 s 36(1); Naval Discipline Act 1957 s 14A(1) (s 14A added by the Armed Forces Act 1971 s 10(3)). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 36(1); Air Force Act 1955 s 36(1); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

2 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

3 The Queen's Regulations for the Army 1975 paras 5.121-5.123 and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 989 provide that it is the duty of personnel of all ranks to make themselves acquainted with the orders and other instructions published from time to time, and make provision for the manner in which orders should be published. There are no corresponding naval regulations, and so in naval proceedings it must always be a question of fact (judged in the light of service experience) as to whether the accused might reasonably be expected to have known of the order in question. Orders and other instructions are required to be posted in suitable places in the unit to which they relate, and a complete file of unit routine orders and standing orders must be kept and made available for perusal: Queen's Regulations for the Army 1975 paras 5.122, 5.127; Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 3 para 64, Ch 15 para 989.

4 Army Act 1955 s 36(1), (2); Air Force Act 1955 s 36(1), (2); Naval Discipline Act 1957 s 14A(1), (2) (as added: see note 1 supra). The standing and routine orders to which these provisions relate are those made for a formation, unit or body of Her Majesty's forces, for any command or other area, garrison or place, or for any ship, train or aircraft: Army Act 1955 s 36(2) (amended by the Armed Forces Act 1971 s 10(1)); Air Force Act 1955 s 36(2) (amended by the Armed Forces Act 1971 s 10(2)). As to the meanings of 'ship' and 'aircraft', and as to Her Majesty's ships and aircraft, see paras 6 notes 3, 4, 21 note 13 ante. As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

In proceedings against any person (whether by court-martial or otherwise), standing or other routine orders of a continuing nature may be proved by a certificate purporting to be signed by that person's commanding officer: see para 377 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

402 Disobedience to standing orders

TEXT AND NOTES--As to the contravention of standing orders, see now the Armed Forces Act 2006 s 13. A person guilty of an offence under s 13 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 13(3).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/403. Obstruction of provost officers.

403. Obstruction of provost officers.

It is an offence for any person subject to naval discipline or to military law or air force law¹ to obstruct², or refuse to assist when called on, a provost officer³ or any person (whether or not subject to naval discipline or to military or air force law) lawfully exercising authority under or on behalf of a provost officer⁴.

A person guilty of this offence is liable to imprisonment for a term not exceeding two years or any less punishment provided for or authorised⁵. It is a defence for any person charged with this offence to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was a provost officer or, as the case may be, a person legally exercising authority under or on behalf of a provost officer⁶.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 It has been held that anything done which makes it more difficult for an official to carry out his duty is obstruction: *Hinchcliffe v Sheldon* [1955] 3 All ER 406, [1955] 1 WLR 1207, DC (where the defendant, finding police attempting to enter a public house to investigate a suspected offence by the publican, shouted a warning to the publican, and was convicted of obstructing the police). It need not involve physical violence: *Borrow v Howland* (1896) 74 LT 787, DC. Merely to stand by and do nothing is not obstruction unless there is a duty to act: *Rice v Connolly* [1966] 2 QB 414, [1966] 2 All ER 649, DC (where the accused, having no legal duty to give his name and address to the police or to go with them to the police station, refused to do either, and was held not guilty of obstruction).

3 In the Army Act 1955 and the Air Force Act 1955, 'provost officer' means a provost marshal or officer appointed to exercise the functions conferred by or under the Army Act 1955 or the Air Force Act 1955, as the case may be, on provost officers, and includes a naval provost marshal, an assistant to a naval provost marshal, and an officer appointed to exercise functions conferred by or under either of those Acts, and corresponding with those of a provost officer under either of those Acts: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1). In the Naval Discipline Act 1957, 'provost officer' means a naval provost marshal, an assistant to a naval provost marshal and any other officer being a provost officer within the meaning of either of the other two service discipline Acts: s 135(1). As to the service discipline Acts see para 302 ante.

4 Army Act 1955 s 35 (amended by the Armed Forces Act 1971 s 9(1)(a)); Air Force Act 1955 s 35 (amended by the Armed Forces Act 1971 s 9(1)(a)); Naval Discipline Act 1957 s 14 (amended by the Armed Forces Act 1971 ss 9(2), 77(1), Sch 4 Pt I).

5 Army Act 1955 s 35; Air Force Act 1955 ss 35; Naval Discipline Act 1957 s 14 (all as amended: see note 4 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 35 (as so amended); Air Force Act 1955 s 35 (as so amended); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

6 Army Act 1955 s 35 proviso (added by the Armed Forces Act 1971 s 9(1)(b)); Air Force Act 1955 s 35 proviso (added by the Armed Forces Act 1971 s 9(1)(b)); Naval Discipline Act 1957 s 14 proviso (added by the Armed Forces Act 1971 s 9(1)(b), (2)). This is the same defence as that which is open to a person charged with an offence of insubordinate behaviour (see para 400 ante). As to statutory provisions which cast the burden of proof on the accused (and the compatibility of such provisions with the presumption of innocence in the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2)) see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1370-1371. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 142.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

403 Obstruction of [service policemen]

TEXT AND NOTES--As to this offence, see now the Armed Forces Act 2006 s 27, which refers to obstructing or failing to assist a service policeman. A person guilty of an offence under s 27 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 27(3). 'Service policeman' means a member of a service police force; and 'service police force' means the Royal Navy Police, the Royal Military Police, or the Royal Air Force Police: s 375(1).

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404. Desertion, absence without leave and related offences.

Desertion, absence without leave, and improperly leaving a ship, are each an offence under naval discipline, military law and air force law, the distinction between them consisting primarily in the intention with which the conduct giving rise to the offence is committed¹.

A person subject to naval discipline or to military or air force law² is guilty of desertion if he leaves, or fails to attend³ at, his unit, ship⁴ or place of duty with the intention⁵ (whether formed at the time of leaving or failing to attend, or subsequently) of remaining permanently absent from duty without lawful authority⁶, or if he absents himself without leave with intent to avoid serving at any place overseas, or to avoid service, or any particular service, when before the enemy⁷.

Any such person is guilty of the offence of absence without leave, or of improperly leaving his ship, by the mere fact of absenting himself without leave, or of improperly leaving his ship, without proof of any of the intentions which would cause his absence or leaving of his ship to amount to desertion⁸.

A person guilty of desertion is liable to imprisonment for any term or to any less punishment as may be provided for or authorised, whereas the punishment for absence without leave or for improperly leaving a ship is imprisonment for not more than two years, or any less punishment as may be provided for or authorised⁹. These offences also render offenders liable to various forfeitures¹⁰. In certain circumstances, where a deserter signs a confession that he is guilty of desertion, there is power to dispense with his trial for that offence¹¹.

It is also an offence for any person subject to naval discipline or to military or air force law, knowing that any other person so subject has committed any offence of desertion, absence without leave or improperly leaving his ship¹², or is attempting to commit any such offence, to fail to report the fact without delay, or to fail to take any steps within his power to cause the apprehension of that person¹³. The punishment for such an offence is imprisonment for not more than two years, or any less punishment provided for or authorised¹⁴.

1 See the Army Act 1955 ss 37-39 (as amended); the Air Force Act 1955 ss 37-39 (as amended); and the Naval Discipline Act 1957 ss 15-18 (as amended); and the text and notes 2-14 infra.

2 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

3 Eg by failing to return after a period of leave or after completing a duty away from his unit, ship or other normal place of duty.

4 As to the meaning of 'ship' see paras 6 note 3, 21 note 13 ante.

5 As the formation of the intention alleged is the essence of the offence of desertion, the burden of proving it is on the prosecution, but the fact that the accused did form the requisite intention can be inferred from the circumstances, eg from the length of his alleged absence, in spite of his having had opportunities to return (see *R v Mahoney* [1956] 3 All ER 799, [1957] 1 WLR 98, C-MAC); from his having thrown away or concealed his uniform, identity card etc, or having otherwise sought to disguise himself; from the fact that he has been arrested rather than surrendering or from his entering or enlisting in any of Her Majesty's forces, or attempting to do so, without disclosing a previous commission or engagement still subsisting. It has been held under the Naval Discipline Act 1957 that as an officer has no right to resign his commission without permission, one who purports to resign, after being refused leave to do so, and then leaves his ship for good without permission, is

guilty of desertion: *R v Cuming, ex p Hall* (1887) 19 QBD 13, DC. The Naval Discipline Act 1957 makes provision for the proof by certificate, in proceedings for desertion, of the facts as to the surrender or arrest of the offender, and as to whether he was wearing naval uniform. Cf the Army Act 1955 s 189(1), (2) (as amended), and the Air Force Act 1955 s 189(1), (2) (as amended): see para 378 ante.

6 Army Act 1955 s 37(2)(a) (s 37 substituted by the Armed Forces Act 1971 s 11(1)); Air Force Act 1955 s 37(2)(a) (s 37 substituted by the Armed Forces Act 1971 s 11(1), (2)); Naval Discipline Act 1957 s 15(a) (s 15 substituted by the Armed Forces Act 1971 s 11(3)).

7 Army Act 1955 s 37(2)(b); Air Force Act 1955 s 37(2)(b); Naval Discipline Act 1957 s 15(b) (all as substituted: see note 6 supra). 'Before the enemy', in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1) (definition added by the Armed Forces Act 1971 s 43, Sch 1 para 2(1), (5)(a)). As to the meaning of 'enemy' see para 305 note 1 ante. For the application of military offences to the reserve and auxiliary forces see para 247 ante.

There is no time limit for the commencement of trial by court-martial for desertion (see para 304 ante). However, there is an exemption from trial for desertion otherwise than on active service, for a person subject to military law and air force law who has served in an exemplary manner for three years after committing the offence: see the Army Act 1955 s 132(2); the Air Force Act 1955 s 132(2); and para 304 ante. An absentee continues to be subject to military law during his absence so he can be tried however long he is away from his unit. As to the meaning of 'on active service' see para 305 ante.

On a charge of desertion or absence without leave it is necessary for the prosecution to prove the commencement and termination of the period of illegal absence. As to the various forms of documentary evidence of these matters see para 377 ante.

A person subject to military law or air force law may be found guilty of absence without leave on a charge of desertion or attempting to desert: Army Act 1955 s 98(6), Sch 3 paras 6, 7; Air Force Act 1955 s 98(6), Sch 3 paras 6, 7. It is submitted that the same result could be achieved under the Naval Discipline Act 1957: see s 68(1)(b); and para 469 post. A person on a charge of desertion or absence without leave may also be found guilty of one or other of those offences for a shorter period than is alleged in the particulars of the charge: see the Army Act 1955 s 103(2)(j) (as substituted); the Air Force Act 1955 s 103(2)(j) (as substituted); and para 487 post. See also the Courts-Martial (Army) Rules 1997, SI 1997/169, r 71; the Courts Martial (Royal Navy) Rules 1997, SI 1997/170, r 63; and the Courts Martial (Royal Air Force) Rules 1997, SI 1997/171, r 71. It is submitted that the court should only bring in a special finding if the judge advocate has left that course open in summing up or, alternatively, the court has indicated that it is considering such a course so as to enable the defence to make any submissions.

As to desertion and absence without leave see further the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 40 para 4001 et seq; the Queen's Regulations for the Army 1975 paras 5.207-5.209, J5.210; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 paras 1060, 1085-1086, J1087, 1088-1097.

8 Army Act 1955 s 38 (substituted by the Armed Forces Act 1971 s 12(1)); Air Force Act 1955 s 38 (substituted by the Armed Forces Act 1971 s 12(1), (2)); Naval Discipline Act 1957 s 17(1) (amended by the Armed Forces Act 1971 ss 12(3), 77(1), Sch 4 Pt I). Each of these provisions creates two offences, ie absence without leave and improperly leaving ship. The latter is traditionally a naval offence, and the gravamen of it is the leaving of the ship rather than the illegal absence, that offence being regarded in the navy as more serious (other things, eg duration of absence, being equal) than absence without leave, because of the risk of delay to a ship which it may entail, and it is only applied in the case of a potentially sea-going ship. See also, as to absence without leave, note 7 supra.

9 Army Act 1955 s 37(1) (as substituted: see note 6 supra), s 38 (as substituted: see note 8 supra); Air Force Act 1955 s 37(1) (as substituted: see note 6 supra), s 38 (as substituted: see note 8 supra); Naval Discipline Act 1957 s 16(1) (amended by the Armed Forces Act 1971 Sch 4 Pt I), Naval Discipline Act 1957 s 17(1) (as amended: see note 8 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 37(1), 38 (as so substituted); Air Force Act 1955 ss 37(1), 38 (as so substituted); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante. In *R v McKendry* [2001] All ER (D) 236 (Feb), C-MAC, it was held that courts in the three services could properly sentence at different levels to reflect differing service conditions.

10 In the army and the air force, a soldier's or airman's engagement is forfeited in respect of any period for which he has been convicted of being a deserter, but not in respect of a period of absence without leave not amounting to desertion; a finding by a board of inquiry that he has been absent without leave for not less than 21 days, recorded in the service books, has the like effect as a court-martial conviction for desertion, unless subsequently annulled or unless the absentee subsequently surrenders or is arrested: see the Army Act 1955 ss 17(1), 136; Air Force Act 1955 ss 17(1), 136 (the Army Act 1955 s 136 and the Air Force Act 1955 s 136 amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). Conviction for desertion or absence without leave may also entail forfeiture of pay for the proved period of absence (see the

Army Act 1955 s 145(1)(a); the Air Force Act 1955 s 145(1)(a); the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 36 para 2659; and para 218 ante); and a reduction in benefits (see eg the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 39 para 3017). Conviction for desertion under the Naval Discipline Act 1957 also renders the offender liable to forfeiture of pay, pension and other financial benefits, and of clothes and effects left by him on board his ship or at his place of duty: see s 16(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). A conviction of absence without leave renders a rating other than a warrant officer liable to forfeiture of one day's pay for each complete period of 24 hours' absence: see the Army Act 1955 s 17(1); the Air Force Act 1955 s 17(1). Such forfeiture as could be imposed on a conviction for desertion under the Naval Discipline Act 1957 may also be imposed by order on any person subject to that Act who appears to be absent without leave, without prejudice to any proceedings which may follow on his apprehension or return: see s 75(1) (amended by the Armed Forces Act 1971 ss 60, 77(1), Sch 4 Pt II; and by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

11 See paras 373-374 ante.

12 If an offence under the Army Act 1955 s 37(1) (as substituted) or s 38 (as substituted), the Air Force Act 1955 s 37(1) (as substituted) or s 38 (as substituted), or the Naval Discipline Act 1957 s 16(1) (as amended) or s 17(1) (as amended): see the text and notes 1-11 supra.

13 Army Act 1955 s 39 (substituted by the Armed Forces Act 1971 s 13(1)); Air Force Act 1955 s 39 (substituted by the Armed Forces Act 1971 s 13(1), (2)); Naval Discipline Act 1957 s 18 (amended by the Armed Forces Act 1971 s 13(3)). As to the civil offence of falsely pretending to be a deserter or absentee without leave see para 42 ante; and as to the offences of procuring, persuading or assisting desertion or absence without leave, see para 43 ante.

14 Army Act 1955 s 39 (as substituted: see note 13 supra); Air Force Act 1955 s 39 (as substituted: see note 13 supra); Naval Discipline Act 1957 s 18 (as amended: see note 13 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 39 (as so substituted); Air Force Act 1955 s 39 (as so substituted); Naval Discipline Act 1957 s 48(1).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

404 Desertion, absence without leave and related offences

TEXT AND NOTES--As to the offences of desertion, absence without leave and failure to cause apprehension of deserters or absentees, see now the Armed Forces Act 2006 ss 8-10.

NOTE 1--A charge of disobedience to a lawful order can be based on the same facts as those surrounding a charge of being absent without leave: *R v Brown (prosecution appeal under Courts-Martial (Prosecution Appeals) Order 2006)* [2007] All ER (D) 352 (Oct), C-MAC.

NOTE 7--See now the Armed Forces (Court Martial) Rules 2009, SI 2009/2041.

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405. Malingering, drunkenness, disorderly conduct and fighting.

The offence of malingering is committed by any person subject to naval discipline or to military or air force law¹ who

- 359 (1) falsely pretends to be suffering from sickness or disability²;
- 360 (2) injures himself, or causes himself to be injured by any person³, with intent thereby to render himself unfit⁴ for service⁵;
- 361 (3) at the instance of another person subject to service law⁶ injures that person with intent thereby to render him unfit for service⁷; or
- 362 (4) with intent to render or keep himself unfit for service, does or fails to do anything which produces, prolongs or aggravates any sickness or disability⁸.

Drunkenness on the part of any person subject to naval discipline or to military or air force law is an offence if, owing to the influence of alcohol or any drug⁹, whether alone or in combination with any other circumstances, the person is unfit to be entrusted with his duty or with any duty which he might reasonably expect to be called upon to perform, or behaves in a manner which is disorderly or likely to bring discredit on Her Majesty's service¹⁰.

It is also an offence for any person subject to naval discipline or to military or air force law, without reasonable excuse either to fight with any other person, whether subject to service law or not¹¹, or to use threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance¹².

The punishment for any of these offences is imprisonment for a term of not more than two years, or any less punishment provided for or authorised¹³.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 Army Act 1955 s 42(1)(a); Air Force Act 1955 s 42(1)(a); Naval Discipline Act 1957 s 27(1).

3 It seems that the person who inflicts the injury need not himself be subject to service law.

4 'Unfit' includes temporarily unfit: Army Act 1955 s 42(2); Air Force Act 1955 s 42(2); Naval Discipline Act 1957 s 27(1).

5 Army Act 1955 s 42(1)(b); Air Force Act 1955 s 42(1)(b); Naval Discipline Act 1957 s 27(1).

6 For the meaning of 'service law' see para 399 note 2 ante.

7 Army Act 1955 s 42(1)(c) (amended by the Armed Forces Act 1971 s 14(a)); Air Force Act 1955 s 42(1)(c) (amended by the Armed Forces Act 1971 s 14(a)); Naval Discipline Act 1957 s 27(1) (amended by the Armed Forces Act 1971 s 14(b)).

8 Army Act 1955 s 42(1)(d); Air Force Act 1955 s 42(1)(d); Naval Discipline Act 1957 s 27(1). For these purposes, it does not matter whether at the time of the act or omission in question the person is in hospital or not: Army Act 1955 s 42(1)(d); Air Force Act 1955 s 42(1)(d); Naval Discipline Act 1957 s 27(1).

9 'Drug' has been held to include any medicine, including insulin, given to cure, assist or alleviate an ailing body (*Armstrong v Clarke* [1957] 2 QB 391, [1957] 1 All ER 433, DC); but 'drug' may include any substance (medicinal or not) which is taken into the body (whether by swallowing, inhalation, injection or otherwise) and

which affects the control of the body and is neither a food nor a beverage (*Bradford v Wilson* [1984] RTR 116, 78 Cr App Rep 77, DC (inhaling glue)).

10 Army Act 1955 s 43(2) (amended by the Armed Forces Act 1971 s 15(1)(b)); Air Force Act 1955 s 43(2) (amended by the Armed Forces Act 1971 s 15(1)(b)); Naval Discipline Act 1957 s 28(1) (amended by the Armed Forces Act 1971 s 15(1)(b), (2)). The offence is committed whether the effect is due to such an influence alone or by it in combination with any other circumstances (eg fatigue, or the interaction of alcohol with some drug previously administered to the accused in the course of lawful medical treatment).

11 Army Act 1955 s 43A(a) (s 43A added by the Armed Forces Act 1971 s 16(1)); Air Force Act 1955 s 43A(a) (s 43A added by the Armed Forces Act 1971 s 16(1), (2)); Naval Discipline Act 1957 s 13(a) (s 13 amended by the Armed Forces Act 1971 ss 16(3), 77(1), Sch 4 Pt I).

12 Army Act 1955 s 43A(b) (as added: see note 11 supra); Air Force Act 1955 s 43A(b) (as added: see note 11 supra); Naval Discipline Act 1957 s 13(b) (as amended: see note 11 supra). It is the practice of all three services, when framing charges under these provisions, to charge either with using threatening etc words or with using threatening etc behaviour, as distinct offences, and not to allege the use of 'words and behaviour' or 'words or behaviour' in one and the same charge. If this practice is followed, in proceedings under the Army Act 1955 or the Air Force Act 1955, it is open to a court-martial or a standing civilian court (which could be called upon to try these offences committed on active service: see paras 305, 311 ante) to convict an accused charged with using threatening etc words of using threatening etc behaviour, or vice versa: see the Army Act 1955 s 98(5), Sch 3 paras 7A, 7B (added by the Armed Forces Act 1971 s 43, Sch 1 para 1(1), (14)); and the Air Force Act 1955 s 98(5), Sch 3 paras 7A, 7B (added by the Armed Forces Act 1971 Sch 1 para 1(1), (14)). As to the meaning of 'on active service' see para 305 ante. The Army Act 1955 Sch 3 (as amended) and the Air Force Act 1955 Sch 3 (as amended) bear the title 'Alternative offences of which accused may be convicted by court-martial', and the inclusion in them of using threatening etc words and using threatening etc behaviour as alternative findings would seem to lend support to the view that these are two distinct offences. In proceedings under the Naval Discipline Act 1957, reliance is placed on s 68(1)(b) (see para 469 post) to obtain alternative findings on charges laid under s 13(b) (as amended).

13 Army Act 1955 ss 42(1), 43(1) (amended by the Armed Forces Act 1966 ss 21(5), (7), 37(2), Sch 5; and by the Armed Forces Act 1971 s 15(1)(a), Sch 4 Pt I); Army Act 1955 s 43A (as added: see note 11 supra); Air Force Act 1955 ss 42(1), 43(1) (amended by the Armed Forces Act 1966 ss 21(5), (7), 37(2), Sch 5; and by the Armed Forces Act 1971 s 15(1)(a), Sch 4 Pt I); Air Force Act 1955 s 43A (as added: see note 11 supra); Naval Discipline Act 1957 ss 13, 27(2), 28(2) (s 13 as amended: see note 11 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 42(1), 43(1) (as so amended), s 43A (as so added); Air Force Act 1955 ss 42(1), 43(1) (as so amended), s 43A (as so added); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

405 Malingering, drunkenness, disorderly conduct and fighting

TEXT AND NOTES--As to the offences of malingering, unfitness or misconduct through alcohol or drugs, and fighting or threatening behaviour, see now the Armed Forces Act 2006 ss 16, 20 and 21. A person guilty of an offence under s 16, 20 or 21 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see ss 16(4), 20(5), 21(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/406. Refusal to submit to drug testing.

406. Refusal to submit to drug testing.

A drug testing officer¹ may request any person subject to naval discipline, military law or air force law to provide a sample of his urine for testing for the presence of drugs². Any such person who when so requested fails to provide a sample is liable to a term of imprisonment not exceeding six months or any lesser punishment provided for or authorised³.

The Armed Forces Act 2001⁴ provides for the drug⁵ testing of persons subject to service law⁶ who are involved in incidents resulting in or creating a risk of death or serious injury to any person or serious damage to any property⁷. If a designated officer⁸ is of the opinion that it is possible that one or more persons subject to service law may have caused, or in any way contributed to, the occurrence of any such incident or any resultant death or serious injury or serious damage or the risk thereof, he may make provision for all or any of those persons to provide a sample⁹ for the purpose of ascertaining whether, or to what extent, that person has, or has had, alcohol or drugs in his body¹⁰. The means by which a sample may be requested¹¹ depends upon whether or not the designated officer is the commanding officer¹² of the suspected person¹³. Any person subject to naval discipline or to military law or air force law¹⁴ who, without reasonable excuse, fails to comply with a request for a sample¹⁵, commits an offence and is liable to imprisonment for a term not exceeding six months or any lesser punishment provided for or authorised¹⁶.

The Armed Forces Act 2001 also provides that nothing in the service Acts relating to the taking of samples for drug testing¹⁷ limits the existing statutory powers to take breath and other specimens under road traffic legislation¹⁸ or to take samples under the general criminal law¹⁹, or affects the admissibility in any proceedings of evidence obtained under those powers²⁰.

1 So far as relating to persons subject to naval discipline, 'drug testing officer' means an officer, chief petty officer, petty officer or leading rating authorised by or in accordance with Queen's Regulations for the purpose of supervising the conduct of tests for the presence of drugs (Naval Discipline Act 1957 s 12A(2) (s 12A added by the Armed Forces Act 1996 s 32(3); and the Naval Discipline Act 1957 s 12A(2) amended by the Armed Forces Act 2001 s 32(9), Sch 5 para 5(1), (4))), and for the purposes of persons subject to military law or air force law, 'drug testing officer' means an officer, warrant officer or non-commissioned officer authorised by or in accordance with Queen's Regulations for the purpose of supervising the conduct of tests for the presence of drugs (Army Act 1955 s 34A(2) (s 34A added by the Armed Forces Act 1996 s 32(1)); Air Force Act 1955 s 34A(2) (s 34A added by the Armed Forces Act 1996 s 32(2))). As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante. As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante. As to Queen's Regulations see para 5 ante. Service policy on drug testing is implemented by Joint and Single Service Compulsory Drug Testing Teams who are authorised to take urine samples: see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 36 para 3626; the Queen's Regulations for the Army 1975 para 5.095-5.098; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1023A. The persons who may request a sample in the Royal Navy are any officer, warrant officer, senior officer, non-commissioned officer or leading rating of the compulsory drug testing team or any such person appointed to assist the team: Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 36 para 3626. The persons who may request a sample in the army are any officer, warrant officer or non-commissioned officer of the compulsory drug testing team or any officer, warrant officer or non-commissioned officer appointed to assist them: Queen's Regulations for the Army 1975 para 5.096 (which also provides that an individual's commanding officer may order him to take a test). In the air force the provision is the same as for the army, except that an individual's commanding officer cannot order a test: Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1023A. In each service, save in exceptional circumstances, a person who fails a compulsory drugs test will ordinarily be discharged administratively, although an individual cannot be prosecuted for drug offences by reason of failing a compulsory drug test unless an investigation ensues which results in other evidence becoming available: see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 36 para 3626; the Queen's Regulations for the Army 1975 para 5.095-5.098; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1023A.

2 Army Act 1955 s 34A(1); Air Force Act 1955 s 34A(1); Naval Discipline Act 1957 s 12A(1) (all as added: see note 1 supra). For these purposes 'drug' means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971: Army Act 1955 s 34A(2); Air Force Act 1955 s 34A(2); Naval Discipline Act 1957 s 12A(2) (all as so added). As to controlled drugs for the purposes of the Misuse of Drugs Act 1971 see s 2, Sch 2 (Sch 2 as amended); and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) para 237 et seq.

As from a day to be appointed, the purpose for which a drug testing officer may request a urine sample is that of ascertaining whether, or to what extent, a person has, or has had, drugs in his body: Army Act 1955 s 34A(1) (as so added; prospectively amended by the Armed Forces Act 2001 Sch 5 para 1(1), (2)); Air Force Act 1955 s 34A(2) (as so added; prospectively amended by the Armed Forces Act 2001 Sch 5 para 1(1), (2)); Naval Discipline Act 2001 Sch 5 para 5(1), (3)), and a sample may not be requested if it is sought in connection with an investigation of an offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, or an investigation of such an incident as is referred to in the Armed Forces Act 2001 s 32(1)(a) (not yet in force) (see the text and note 7 infra) (Army Act 1955 s 34A(1B) (as so added); Air Force Act 1955 s 34A(1B) (as so added); Naval Discipline Act 1957 s 12A(1B) (as so added)). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, a drug testing officer may not require a person to provide a urine sample if he or his commanding officer is that person's commanding officer (Army Act 1955 s 34A(1A) (s 34A as so added; s 34A(1A)-(1D) prospectively added by the Armed Forces Act 2001 Sch 5 para 1(1), (3)); Air Force Act 1955 s 34A(1A) (s 34A as so added; s 34A(1A)-(1D) prospectively added by the Armed Forces Act 2001 Sch 5 para 1(1), (3)); Naval Discipline Act 1957 s 12A(1A) (s 12A as so added; s 12A(1A)-(1D) prospectively added by the Armed Forces Act 2001 Sch 5 para 5(1), (3)), and a sample may not be requested if it is sought in connection with an investigation of an offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, or an investigation of such an incident as is referred to in the Armed Forces Act 2001 s 32(1)(a) (not yet in force) (see the text and note 7 infra) (Army Act 1955 s 34A(1B) (as so added); Air Force Act 1955 s 34A(1B) (as so added); Naval Discipline Act 1957 s 12A(1B) (as so added)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'commanding officer' see paras 348 note 2, 353 note 4 ante.

3 Army Act 1955 s 34A(1) (as added: see note 1 supra); Air Force Act 1955 ss 34A(1) (as added: see note 1 supra); Naval Discipline Act 1957 s 12A(1) (as added (see note 1 supra); and amended by the Armed Forces Act 2001 ss 32(9), 38, Sch 5 para 5(1), (2)(b), Sch 7 Pt 7). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 34A(1) (as so added); Air Force Act 1955 s 34A(1) (as so added); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

As from a day to be appointed, it is provided that the results of tests performed on a sample provided by a person at the request of a drugs testing officer are not admissible in evidence against that or any other person in proceedings before a court-martial, commanding officer or appropriate superior authority: Army Act 1955 s 34A(1C) (s 34A as so added; s 34A(1C) prospectively added (see note 2 supra)); Air Force Act 1955 s 34A(1C) (s 34A as so added; s 34A(1C) prospectively added (see note 2 supra)); Naval Discipline Act 1957 s 12A(1C) (s 12A as so added; s 12A(1C) prospectively added (see note 2 supra)). At the date at which this volume states the law no such day had been appointed. For the meaning of 'appropriate superior authority' see paras 350 note 11, 354 note 8 ante.

4 The Armed Forces Act 2001 ss 32, 33 are to be brought into force by order of the Secretary of State under s 39(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see para 2 ante.

5 For these purposes, 'drug' means a controlled drug as defined by the Misuse of Drugs Act 1971 s 2 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) para 237 et seq) (Armed Forces Act 2001 s 33(1), (2)(a) (not yet in force: see note 4 supra)) or any other drug, or description of drug, specified in an order made by the Secretary of State (s 33(1), (2)(b) (not yet in force: see note 4 supra)). The power conferred by s 33(2)(b) includes power to specify a description of drug by reference to the effects or likely effects of taking drugs within that description: s 33(1), (4) (not yet in force: see note 4 supra). At the date at which this volume states the law no such order had been made.

6 For these purposes, any reference to a person subject to service law is a reference to a person subject to naval discipline, military law or air force law (Armed Forces Act 2001 s 33(1), (7)(a) (not yet in force: see note 4 supra)) or a civilian to whom the relevant legislation is applied (ie a person to whom any of the provisions of the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended) or the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended) or Pt II (ss 45-92) (as amended) apply by virtue of, as the case may be, the Army Act 1955 s 209(1) or s 209(2), the Air Force Act 1955 s 209(1) or s 209(2), or the Naval Discipline Act 1957 s 118(1) or s 118(2) (all as amended) (see paras 21, 311 ante)) (Armed Forces Act 2001 s 33(1), (7)(b) (not yet in force: see note 4 supra)). However, a person is not regarded for these purposes as a person subject to service law if the relevant statutory provisions apply to him only by virtue of his being a family member or employee not on active service (ie by virtue of his falling within any description specified in the Army Act 1955 Sch 5 paras 5-9, the Air Force Act 1955 Sch 5 paras 5-9, or the Naval Discipline Act 1957 Sch 3 paras 5-9 (see para 311 ante)): Armed Forces Act 2001 s 33(1), (8) (not yet in force: see note 4 supra).

7 Ibid s 32(1)(a) (not yet in force: see note 4 supra).

8 A 'designated officer' is an officer designated for these purposes in accordance with regulations made by the Defence Council: *ibid* s 32(1) (not yet in force: see note 4 *supra*). Any such designation may be expressed to have effect only in relation to a particular incident or description of incident: s 32(2) (not yet in force: see note 4 *supra*). The Defence Council may by regulations provide for the delegation by a designated officer of his functions under s 32(1), (3), (4) (not yet in force) (see the text and notes 9-13 *infra*): s 32(7)(a) (not yet in force: see note 4 *supra*). As to the Defence Council see para 2 *ante*. Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work.

9 'Sample' means: (1) a sample of urine or breath (where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, alcohol in his body) (*ibid* s 33(1), (3)(a) (not yet in force: see note 4 *supra*)); (2) a sample of urine (where the sample is requested for the purpose of ascertaining whether, or to what extent, a person has, or has had, drugs in his body) (s 33(1), (3)(b) (not yet in force: see note 4 *supra*)); and (3) in either case, any other sample specified by the Secretary of State (which may not include a sample of blood, semen or other tissue fluid or anything which would have to be provided from a person's body orifice (other than the mouth)) in an order made for these purposes (s 33(1), (3)(c), (5) (not yet in force: see note 4 *supra*)). At the date at which this volume states the law no such orders had been made.

10 *Ibid* s 32(1)(b), (3), (4) (not yet in force: see note 4 *supra*). The Defence Council may by regulations make provision about the obtaining and testing of samples, and any such regulations may in particular make provision: (1) as to the number of samples which may be requested (s 32(5)(a) (not yet in force: see note 4 *supra*)); (2) as to the circumstances in which a person may be requested to provide more than one type of sample (s 32(5)(b) (not yet in force: see note 4 *supra*)); (3) enabling the commanding officer making the request to specify the manner in which the sample is to be provided (s 32(5)(c) (not yet in force: see note 4 *supra*)); (4) as to the circumstances in which a person who would (apart from any regulations made in pursuance of this power) be liable to be requested to provide a sample is not to be so requested (s 32(5)(d) (not yet in force: see note 4 *supra*)); (5) as to the equipment to be used, and the procedures to be followed, in obtaining samples and conducting tests (s 32(5)(e) (not yet in force: see note 4 *supra*)); and (6) as to the qualifications and training of any persons engaged in obtaining samples and conducting tests (s 32(5)(f) (not yet in force: see note 4 *supra*)). Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work. The results of tests performed on samples provided by a person pursuant to a request made under s 32(3) or s 32(4) are not admissible in evidence against him or any other person in proceedings before a court-martial, commanding officer or appropriate superior authority: s 32(6) (not yet in force: see note 4 *supra*).

11 If the sample is one falling within *ibid* s 33(3)(c) (see note 9 head (3) *supra*), any reference to a person being requested to provide a sample includes a reference to a person being requested to consent to the taking from him of a sample: s 33(1), (6) (not yet in force: see note 4 *supra*).

12 For these purposes, the commanding officer of a person subject to service law is: (1) in relation to a person subject to military or air force law, the officer who would be that person's commanding officer for the purposes of the Army Act 1955 s 82 (as amended) or the Air Force Act 1955 s 82 (as amended), as the case may be (see paras 353-354 *ante*) if he were charged with an offence (Armed Forces Act 2001 s 33(1), (9)(a), (b) (not yet in force: see note 4 *supra*)); (2) in relation to a person subject to naval discipline or a person to whom provisions of the Naval Discipline Act 1957 apply by virtue of s 118(1) or s 118(2) (as amended) (see paras 21, 311 *ante*), the officer in command of the ship or naval establishment to which he belongs or any other person who, by virtue of regulations made under s 52E (as added and amended) (see para 348 *ante*), would be able to exercise the powers conferred by that Act in relation to that person if he were charged with an offence (Armed Forces Act 2001 s 33(1), (9)(c) (not yet in force: see note 4 *supra*)); or (3) in relation to a person to whom provisions of the Army Act 1955 Pt II (as amended) or the Air Force Act 1955 Pt II (as amended) apply by virtue of (as the case may be) the Army Act 1955 s 209(1) or s 209(2) or the Air Force Act 1955 s 209(1) or s 209(2) (all as amended) (see paras 21, 311 *ante*), the person who is by virtue of regulations of the Defence Council made for the purposes of the Army Act 1955 s 209(3)(f) or the Air Force Act 1955 s 209(3)(f) the commanding officer for the purposes of the Army Act 1955 Pt II or the Air Force Act 1955 Pt II in relation to him (Armed Forces Act 2001 s 33(1), (9)(d) (not yet in force: see note 4 *supra*)). The Defence Council may by regulations provide for the delegation by a commanding officer of his functions under s 32(4) (see the text and note 13 *infra*): s 32(7)(b) (not yet in force: see note 4 *supra*). Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work.

13 See *ibid* s 32(3), (4) (not yet in force: see note 4 *supra*). Where the designated officer is the commanding officer of any person suspected of involvement in a serious incident (ie any person in relation to whom he is of the opinion referred to in s 32(1)(b) (see the text and notes 8-10 *supra*), he may request that person to provide the sample: s 32(3) (not yet in force: see note 4 *supra*). Where, however, the designated officer is of the opinion referred to in s 32(1)(b) in relation to one or more persons as respects whom he is not the commanding officer, he may direct the commanding officer of any person specified in the direction, or of persons falling within a class so specified, either to request that person, or (as the case may be) every person appearing to the commanding officer to fall within the specified class, to provide a sample (s 32(4)(a) (not yet in force: see note 4 *supra*)), or to consider whether he is of the opinion referred to in s 32(1)(b) in respect of that person or (as the

case may be) of any persons falling within the specified class and, if so, to request that person or (as the case may be) every person who appears to him to fall within that class, and as to whom he is of that opinion, to provide a sample (s 32(4)(b) (not yet in force: see note 4 supra)).

14 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

15 Ie a request under the Armed Forces Act 2001 s 32(3) (not yet in force) or s 32(4) (not yet in force) (see the text and notes 8-13 supra).

16 Army Act 1955 s 34B (prospectively added by the Armed Forces Act 2001 s 32(9), Sch 5 para 2); Air Force Act 1955 s 34B (prospectively added by the Armed Forces Act 2001 Sch 5 para 3); Naval Discipline Act 1957 s 12B (prospectively added by the Armed Forces Act 2001 Sch 5 para 6). At the date at which this volume states the law no day had been appointed for the commencement of these provisions. Liability for punishment arises on conviction by court-martial: Army Act 1955 s 34B (prospectively added: see supra); Air Force Act 1955 s 34B (prospectively added: see supra); Naval Discipline Act 1957 s 48(1).

17 Ie the Army Act 1955 s 34A, the Air Force Act 1955 s 34A, and the Naval Discipline Act 1957 s 12A (all as added and prospectively amended: see notes 1, 2 supra) (see the text and notes 1-3 supra) and the Armed Forces Act 2001 s 32 (not yet in force: see note 4 supra) (see the text and notes 4-16 supra).

18 Army Act 1955 s 34A(1D)(a)(i) (s 34A as added and s 34A(1D) prospectively added: see notes 1, 2 supra); Air Force Act 1955 s 34A(1D)(a)(i) (s 34A as added and s 34A(1D) prospectively added: see notes 1, 2 supra); Naval Discipline Act 1957 s 12A(1D)(a)(i) (s 12A as added and s 12A(1D) prospectively added: see notes 1, 2 supra); Armed Forces Act 2001 s 32(8)(a)(i) (not yet in force: see note 4 supra). The existing statutory powers to take breath and other specimens under road traffic legislation are the powers conferred by the Road Traffic Act 1988 ss 6, 7 (s 7 as amended), as applied to persons subject to service discipline by s 184: see ROAD TRAFFIC vol 40(2) (2007 Reissue) para 979 et seq.

19 Army Act 1955 s 34A(1D)(a)(ii) (s 34A as added and s 34A(1D) prospectively added: see notes 1, 2 supra); Air Force Act 1955 s 34A(1D)(a)(ii) (s 34A as added and s 34A(1D) prospectively added: see notes 1, 2 supra); Naval Discipline Act 1957 s 12A(1D)(a)(ii) (s 12A as added and s 12A(1D) prospectively added: see notes 1, 2 supra); Armed Forces Act 2001 s 32(8)(a)(ii) (not yet in force: see note 4 supra). In relation to the Army Act 1955 s 34A, the Air Force Act 1955 s 34A, and the Naval Discipline Act 1957 s 12A (all as added), the existing statutory powers to take samples under the general criminal law are the powers conferred by the Police and Criminal Evidence Act 1984 ss 62, 63 (as amended), as applied to persons subject to service discipline by the Police and Criminal Evidence Act 1984 (Application to Armed Forces) Order 1997, SI 1997/15: Army Act 1955 s 34A(1D)(a)(ii) (as so added); Air Force Act 1955 s 34A(1D)(a)(ii) (as so added); Naval Discipline Act 1957 s 12A(1D)(a)(ii) (as so added). As to these powers see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 1028 et seq. In relation to the Armed Forces Act 2001 s 32 (not yet in force), the existing statutory powers to take samples under the general criminal law are the powers conferred by any provision of the Police and Criminal Evidence Act 1984 Pt V (ss 53-65) (as amended), as applied to persons subject to service discipline by the Police and Criminal Evidence Act 1984 (Application to Armed Forces) Order 1997, SI 1997/15: Armed Forces Act 2001 s 32(8)(a)(ii) (not yet in force: see note 4 supra). As to these powers see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 952 et seq, 1006 et seq.

20 Army Act 1955 s 34A(1D)(b) (s 34A as added and s 34A(1D) prospectively added: see notes 1, 2 supra); Air Force Act 1955 s 34A(1D)(b) (s 34A as added and s 34A(1D) prospectively added: see notes 1, 2 supra); Naval Discipline Act 1957 s 12A(1D)(b) (s 12A as added and s 12A(1D) prospectively added: see notes 1, 2 supra); Armed Forces Act 2001 s 32(8)(b) (not yet in force: see note 4 supra).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

406 Refusal to submit to drug testing

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 1-3--As to testing for drugs and refusal to submit to testing, see now the Armed Forces Act 2006 ss 305, 308. A person guilty of an offence under s 305 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment or service detention imposed in respect of the offence must not exceed 51 weeks: s 305(5).

TEXT AND NOTES 4-20--Armed Forces Act 2001 ss 32, 33 repealed: Armed Forces Act 2006 Sch 17. As to testing for alcohol or drugs after serious incident see ss 306-308. As to the evidential burden as respects excuses for offences under s 306, see s 325.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/407. Offences relating to property, including aircraft; damage, loss and waste.

407. Offences relating to property, including aircraft; damage, loss and waste.

Any person subject to naval discipline or to military or air force law¹ commits an offence if he:

- 363 (1) wilfully damages² or causes the loss of, or is concerned in wilful damage or loss of, any public or service property³, any property belonging to another person so subject, or any of Her Majesty's aircraft⁴ or aircraft material⁵;
- 364 (2) by wilful neglect⁶ causes or allows damage to, or the loss of, any such property, aircraft or aircraft material⁷; or
- 365 (3) without lawful authority disposes of any of Her Majesty's aircraft or aircraft material⁸.

Any person guilty of such an offence is liable to imprisonment for an unlimited term or any less punishment which may be provided for or authorised⁹.

A person subject to naval discipline or to military or air force law also commits an offence if he:

- 366 (a) by any negligent¹⁰ act or omission causes or allows damage to, or the loss of, any public or service property or any of Her Majesty's aircraft or aircraft material¹¹;
- 367 (b) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any such property, aircraft or aircraft material¹²; or
- 368 (c) during a state of war¹³, wilfully and without proper occasion, or negligently, causes the sequestration¹⁴ by or under the authority of a neutral state, or the destruction in a neutral state, of any such aircraft¹⁵.

Any person guilty of such an offence is liable to imprisonment for a term of two years or any less punishment which may be provided for or authorised¹⁶.

The misapplication or wasteful expenditure, by any person subject to naval discipline or to military or air force law, of any public or service property is punishable by imprisonment for not more than two years, or any less punishment which may be provided for or authorised¹⁷. Any person so subject is similarly punishable on conviction for the offence of making away with¹⁸, losing, or by negligence damaging or allowing to be damaged, any clothing, arms, ammunition or other equipment issued to him for service purposes or any naval, military or air force decoration¹⁹ granted to him²⁰. It is a defence for any person charged with losing any such property if he took reasonable steps for its care and preservation²¹.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 For the meaning of 'damage' see para 129 note 5 ante.

3 For the meaning of 'property' see para 305 note 3 ante. For the meaning of 'public property' for the purposes of military or air force law see para 394 note 8 ante. 'Service property' for those purposes includes property belonging to any association within the meaning of the Reserve Forces Act 1996 s 110 (see para 226 ante) or to the Navy, Army and Air Force Institutes: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1) (both amended by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 7). For the meaning of 'public or service property' for the purposes of naval discipline see para 394 note 8 ante.

4 As to the meaning of 'aircraft', and as to Her Majesty's aircraft, see paras 6 note 4, 21 note 13 ante.

5 Army Act 1955 ss 44(1)(a), 44A(1)(a) (ss 44-46 substituted, and s 44A added, by the Armed Forces Act 1971 s 17(1)); Air Force Act 1955 ss 44(1)(a), 44A(1)(a) (ss 44-46 substituted, and s 44A added, by the Armed Forces Act 1971 s 17(1), (2)); Naval Discipline Act 1957 ss 29(1)(a), 29A(1)(a) (ss 29, 30 substituted, and s 29A added, by the Armed Forces Act 1971 s 17(1), (3)). 'Aircraft material' includes parts of, and components of or accessories for, aircraft, whether for the time being an aircraft or not; engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft; any other gear, apparatus or instruments in, or for use in, aircraft; any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft; and any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material: Army Act 1955 s 225(1); Air Force Act 1955 s 223(1); Naval Discipline Act 1957 s 135(1).

6 'Wilful neglect' denotes that the offender has an intention to act or omit to act in a manner which he knows to be below the standard of care that he ought to exercise or that he is reckless in the sense that he does not care whether his acts are negligent or not: see *R v Sheppard* [1981] AC 394, 72 Cr App Rep 82, HL; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 8.

7 Army Act 1955 s 44(1)(b) (as substituted: see note 5 supra), s 44A(1)(b) (as added: see note 5 supra); Air Force Act 1955 s 44(1)(b) (as substituted: see note 5 supra), s 44A(1)(b) (as added: see note 5 supra); Naval Discipline Act 1957 s 29(1)(b) (as substituted: see note 5 supra), s 29A(1)(b) (as added: see note 5 supra).

8 Army Act 1955 s 44A(1)(c); Air Force Act 1955 s 44A(1)(c); Naval Discipline Act 1957 s 29A(1)(c) (all as added: see note 5 supra).

9 Army Act 1955 s 44(1) (as substituted: see note 5 supra), s 44A(2)(a) (as added: see note 5 supra); Air Force Act 1955 s 44(1) (as substituted: see note 5 supra), s 44A(2)(a) (as added: see note 5 supra); Naval Discipline Act 1957 s 29(1) (as substituted: see note 5 supra), s 29A(2)(a) (as added: see note 5 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 44(1) (as substituted: see note 5 supra), s 44A(2) (as added: see note 5 supra); Air Force Act 1955 s 44(1) (as substituted: see note 5 supra), s 44A(2) (as added: see note 5 supra); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

10 As to the meaning of 'negligent' see para 397 note 7 ante.

11 Army Act 1955 s 44(2)(a) (as substituted: see note 5 supra), s 44A(1)(d) (as added: see note 5 supra); Air Force Act 1955 s 44(2)(a) (as substituted: see note 5 supra), s 44A(1)(d) (as added: see note 5 supra); Naval Discipline Act 1957 s 29(2)(a) (as substituted: see note 5 supra), s 29A(1)(d) (as added: see note 5 supra).

12 Army Act 1955 s 44(2)(b) (as substituted: see note 5 supra), s 44A(1)(e) (as added: see note 5 supra); Air Force Act 1955 s 44(2)(b) (as substituted: see note 5 supra), s 44A(1)(e) (as added: see note 5 supra); Naval Discipline Act 1957 s 29(2)(b) (as substituted: see note 5 supra), s 29A(1)(e) (as substituted: see note 5 supra).

13 The existence of a state of war is a matter of which a court will take judicial notice, and a certificate as to this from a Secretary of State will be accepted by the court as conclusive: see CIVIL PROCEDURE vol 11 (2009) PARA 786. As to the existence or otherwise of a state of war see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 406. As to the Secretary of State see para 2 ante.

14 'Sequestration' means the detention of property by a court of justice for the purpose of answering a claim which is made: *Re Australian Direct Steam Navigation Co* (1875) LR 20 Eq 325 at 326 per Jessel MR.

15 Army Act 1955 s 44A(1)(f); Air Force Act 1955 s 44A(1)(f); Naval Discipline Act 1957 s 29A(1)(f) (all as added: see note 5 supra).

16 Army Act 1955 s 44(2) (as substituted: see note 5 supra), s 44A(2)(b) (as added: see note 5 supra); Air Force Act 1955 s 44(2) (as substituted: see note 5 supra), s 44A(2)(b) (as added: see note 5 supra); Naval Discipline Act 1957 s 29(2) (as substituted: see note 5 supra), s 29A(2)(b) (as substituted: see note 5 supra). Note, however, that if a person guilty of the offence of wilfully and without proper occasion, or negligently, causing the sequestration by or under the authority of a neutral state, or the destruction in a neutral state, of any of Her Majesty's aircraft during a state of war is proven to have acted wilfully or with wilful neglect, he is liable to imprisonment for an unlimited term or any less punishment which may be provided for or authorised: Army Act 1955 s 44A(2)(a); Air Force Act 1955 s 44A(2)(a); Naval Discipline Act 1957 s 29A(2)(a) (all as added: see note 5 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 44(2), 44A(2) (as so respectively substituted and added); Air Force Act 1955 ss 44(2), 44A(2) (as so respectively substituted and added); Naval Discipline Act 1957 s 48(1).

17 Army Act 1955 s 45; Air Force Act 1955 s 45; Naval Discipline Act 1957 s 30 (all as substituted: see note 5 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 45 (as so substituted);

Air Force Act 1955 s 45 (as so substituted); Naval Discipline Act 1957 s 48(1). A person charged under the Army Act 1955 s 45 (as substituted), or the Air Force Act 1955 s 45 (as substituted) with misapplying public or service property may alternatively be found guilty of wastefully expending the property, and vice versa: see the Army Act 1955 s 98(6), Sch 3 paras 9A, 9B (added by the Armed Forces Act 1971 s 43, Sch 1 para 1(1), (15)); and the Air Force Act 1955 Sch 3 paras 9A, 9B (added by the Armed Forces Act 1971 Sch 1 para 1(1), (15)). In proceedings under the Naval Discipline Act 1957, reliance is placed on s 68(1)(b) (see para 469 post) to obtain alternative findings.

18 le by pawning, selling, destroying or in any other way.

19 As to the meaning of 'decoration' see paras 47 note 3, 377 note 7 ante.

20 Army Act 1955 s 46(1) (as substituted: see note 5 supra); Air Force Act 1955 s 46(1) (as substituted: see note 5 supra); Naval Discipline Act 1957 s 31(1). As to the civil offences of unlawfully acquiring any naval, military or air force stores, or soliciting or procuring any person unlawfully to dispose of any such stores, see para 48 ante; and as to the civil offences of unlawfully using or dealing in service decorations and emblems, see para 47 ante.

21 Army Act 1955 s 46(2) (as substituted: see note 5 supra); Air Force Act 1955 s 46(2) (as substituted: see note 5 supra); Naval Discipline Act 1957 s 31(2).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

407 Offences relating to property, including aircraft; damage, loss and waste

TEXT AND NOTES--As to offences relating to property, see now the Armed Forces Act 2006 ss 24-26.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/408. Offences in relation to billeting and the requisitioning of vehicles and other items.

408. Offences in relation to billeting and the requisitioning of vehicles and other items.

Any person subject to naval discipline or to military or air force law¹ commits an offence if he:

- 369 (1) knowing that he is not authorised to demand any billets², obtains billets or orders or procures another person to obtain them³;
- 370 (2) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle⁴ is or is to be billeted in pursuance of a billeting requisition⁵ any money or thing as consideration for not requiring, or ceasing to require, accommodation for himself or the said other person or standing room for the vehicle⁶;
- 371 (3) wilfully or by wilful neglect⁷ damages, or causes or allows to be damaged, any premises in which he is billeted in pursuance of such a requisition, or any property being in such premises⁸;
- 372 (4) knowing that he is not authorised to give directions⁹ for the requisition of any vehicle or other essential item¹⁰, gives, or orders or procures another person to give, any such directions¹¹;
- 373 (5) knowing that no applicable requisitioning order is in force takes, or orders or procures another person to take, possession of a vehicle or other essential item¹², in purported compliance with such an order¹³; or
- 374 (6) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular direction, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisitioning order¹⁴.

Any person guilty of such an offence is liable to imprisonment for a term of two years or any less punishment which may be provided for or authorised¹⁵.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 I.e. because he knows either: (1) that no billeting requisition is in force under the Army Act 1955 Pt IV (ss 154-176) (as amended) or the Air Force Act 1955 Pt IV (ss 154-176) (as amended) or, so far as these provisions relate to naval billeting, under the Armed Forces Act 1971 s 67(1) (see paras 127, 130 ante); or (2) that he is not otherwise authorised to demand any billets: Army Act 1955 s 47(a); Air Force Act 1955 s 47(a); Naval Discipline Act 1957 s 32(a) (amended by the Armed Forces Act 1971 s 67(3)). As to billeting requisitions generally see para 126 et seq ante.

3 Army Act 1955 s 47(a); Air Force Act 1955 s 47(a); Naval Discipline Act 1957 s 32(a) (as amended: see note 2 supra).

4 For the purposes of the Army Act 1955 s 47(b) and the Air Force Act 1955 s 47(b), 'vehicle' includes 'hovercraft': Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 6, Sch 3 Pt A.

5 I.e. under the Army Act 1955 Pt IV (as amended), the Air Force Act 1955 Pt IV (as amended), or the Armed Forces Act 1971 s 67(1), as the case may be: see note 2 supra.

6 Army Act 1955 s 47(b); Air Force Act 1955 s 47(b); Naval Discipline Act 1957 s 32(b).

7 As to the meaning of 'wilful neglect' see para 407 note 6 ante.

8 Army Act 1955 s 47(c) (added by the Armed Forces Act 1971 s 18); Air Force Act 1955 s 47(c) (added by the Armed Forces Act 1971 s 18); Naval Discipline Act 1957 s 32(c).

9 Ie because he knows either: (1) that no requisitioning order is in force under the Army Act 1955 Pt IV (as amended) or the Air Force Act 1955 Pt IV (as amended) or, so far as these provisions relate to naval requisitions, under the Armed Forces Act 1971 s 67(1) (see paras 127, 130 ante); or (2) that he is not otherwise authorised to give any such directions: Army Act 1955 s 48(1)(a); Air Force Act 1955 s 48(1)(a); Naval Discipline Act 1957 s 33(1)(a) (amended by the Armed Forces Act 1971 s 67(3)). As to requisitioning orders generally see para 130 et seq ante.

10 Ie, for the purposes of the Army Act 1955, any horse, mule, food, forage or stores (Army Act 1955 s 48(2)); for the purposes of the Air Force Act 1955, any aircraft or stores (Air Force Act 1955 s 48(2)); and for the purposes of the Naval Discipline Act 1957, any horse, mule, food, forage or other chattel required for vehicles, horses or mules furnished or to be furnished in pursuance of a requisitioning order or for use in connection with such vehicles, horses or mules, or required for persons or vehicles billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated, or for use in connection with such persons or vehicles (Naval Discipline Act 1957 s 33(2) (amended by the Armed Forces Act 1971 s 67(3))). For the meaning of 'stores' see para 126 note 2 ante (definition applied by the Army Act 1955 s 48(2); and the Air Force Act 1955 s 48(2)).

11 Army Act 1955 s 48(1)(a); Air Force Act 1955 s 48(1)(a); Naval Discipline Act 1957 s 33(1)(a) (as amended: see note 9 supra).

12 As to the other essential items the taking of which may be covered by this provision see note 10 supra.

13 Army Act 1955 s 48(1)(b); Air Force Act 1955 s 48(1)(b); Naval Discipline Act 1957 s 33(1)(b).

14 Army Act 1955 s 48(1)(c); Air Force Act 1955 s 48(1)(c); Naval Discipline Act 1957 s 33(1)(c).

15 Army Act 1955 ss 47, 48(1); Air Force Act 1955 ss 47, 48(1); Naval Discipline Act 1957 ss 32, 33(1). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 47, 48(1); Air Force Act 1955 ss 47, 48(1); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/409. Offences relating to the operation of ships or aircraft.

409. Offences relating to the operation of ships or aircraft.

Any person subject to naval discipline or to military or air force law¹ who wilfully or by negligence² causes or allows the loss, stranding or hazarding of any of Her Majesty's ships³ commits an offence⁴. It is also an offence for any person subject to naval discipline or to military or air force law to be guilty of any act or neglect⁵ in flying, or in the use of any aircraft⁶ or in relation to any aircraft or aircraft material⁷, which causes, or is likely to cause, loss of life or bodily injury to any person⁸. Any person convicted of any of these offences is liable, if he acted wilfully or with wilful neglect⁹, to imprisonment for any term and, in any other case, to imprisonment for not more than two years, or in every case to any less punishment which may be provided for or authorised¹⁰. Any person subject to naval discipline or to military or air force law who, without having ensured its accuracy, makes or signs a certificate as to any matter affecting the sea-going or fighting efficiency of any of Her Majesty's ships, or any certificate relating to any of Her Majesty's aircraft¹¹ or aircraft material, is liable to imprisonment for not more than two years, or any less punishment which may be provided for or authorised¹².

Any person subject to naval discipline or to military or air force law is similarly punishable for the offence of low flying, that is to say being the pilot of one of Her Majesty's aircraft and flying it at a height less than such height as may be provided by regulations issued under the authority of the Defence Council¹³, except when taking off or alighting or in such other circumstances as may be so provided¹⁴. Any person so subject who, being the pilot of one of Her Majesty's aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person is liable to dismissal from Her Majesty's service, or any less punishment which may be provided for or authorised¹⁵. Where a pilot flies an aircraft in contravention of either of these provisions but does so on the orders of some other person who is in command of the aircraft, that other person must be treated, for these purposes, as having been the pilot of the aircraft, and flying it, at the material time¹⁶.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the meaning of 'negligence' cf para 397 note 7 ante.

3 As to the meaning of 'ship', and as to Her Majesty's ships, see paras 6 note 3, 21 note 13 ante.

4 Army Act 1955 s 48A (added by Armed Forces Act 1971 s 19(1)); Air Force Act 1955 s 48A (added by Armed Forces Act 1971 s 19(1), (2)); Naval Discipline Act 1957 s 19 (amended by Armed Forces Act 1971 ss 19(3), 77(1), Sch 4 Pt I). In the navy, where these offences chiefly arise, there are special regulations for the conduct of courts-martial dealing with such offences involving navigational questions, and as to evidence at such trials: see para 389 ante.

5 As to neglect in the performance of a duty see para 397 note 5 ante.

6 For the meaning of 'aircraft' see para 21 note 13 ante. For the purposes of the Army Act 1955 s 49 and the Air Force Act 1955 s 49, 'aircraft' includes 'hovercraft': Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 5, Sch 2 Pt A.

7 For the meaning of 'aircraft material' see para 407 note 5 ante.

8 Army Act 1955 s 49; Air Force Act 1955 s 49; Naval Discipline Act 1957 s 20.

9 For the meaning of 'wilful neglect' see para 407 note 6 ante.

10 Army Act 1955 ss 48A(a), (b), 49 (s 48A as added: see note 4 supra); Air Force Act 1955 ss 48A(a), (b), 49 (s 48A as added: see note 4 supra); Naval Discipline Act 1957 ss 19, 20(a), (b) (s 19 as amended (see note 4 supra); and s 20(a) amended by the Armed Forces Act 1971 Sch 4 Pt I). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 48A, 49 (s 48A as so added); Air Force Act 1955 ss 48A, 49 (s 48A as so added); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante. Since the offences created by these provisions can be committed in circumstances rendering the offender liable to a higher or lesser degree of punishment (ie according to whether he did or did not act wilfully or with wilful neglect), it follows that when the accused is charged with committing one of these offences in the circumstances rendering him liable to the higher degree of punishment he can, if appropriate, be found guilty of committing the offence in circumstances involving only a liability to the lesser degree of punishment, ie otherwise than wilfully or with wilful neglect: see the Army Act 1955 s 98(1); the Air Force Act 1955 s 98(1); the Naval Discipline Act 1957 s 67; and para 469 post.

11 As to Her Majesty's aircraft see para 21 note 13 ante. For the purposes of the Army Act 1955 s 50 and the Air Force Act 1955 s 50, 'aircraft' includes 'hovercraft': Hovercraft (Application of Enactments) Order 1972, SI 1972/971, art 5, Sch 2 Pt A.

12 Army Act 1955 s 50 (substituted by the Armed Forces Act 1971 s 20(1)); Air Force Act 1955 s 50 (substituted by the Armed Forces Act 1971 s 20(1), (2)); Naval Discipline Act 1957 s 25. Liability for punishment arises on conviction by court-martial: Army Act 1955 s 50 (as so substituted); Air Force Act 1955 s 50 (as so substituted); Naval Discipline Act 1957 s 48(1).

13 Such regulations are not statutory instruments and are not recorded in this work.

14 Army Act 1955 s 51; Air Force Act 1955 s 51; Naval Discipline Act 1957 s 21 (all amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 51; Air Force Act 1955 s 51; Naval Discipline Act 1957 s 48(1).

15 Army Act 1955 s 52 (amended by the Armed Forces Act 1971 s 22(2)); Air Force Act 1955 s 52 (amended by the Armed Forces Act 1971 s 22(2)); Naval Discipline Act 1957 s 22. Liability for punishment arises on conviction by court-martial: Army Act 1955 s 52 (as so amended); Air Force Act 1955 s 52 (as so amended); Naval Discipline Act 1957 s 48(1). The mental element of this offence is the intention to fly so as to cause or be likely to cause annoyance, or recklessness as to whether annoyance is or is likely to be caused, and that recklessness in this context may be described as indifference to the feelings and wishes of potential complainants: *R v Paine* [1998] 1 Cr App Rep 36, C-MAC.

16 Army Act 1955 ss 51 proviso, 52 proviso; Air Force Act 1955 ss 51 proviso, 52 proviso; Naval Discipline Act 1957 ss 21 proviso, 22 proviso (all added by the Armed Forces Act 1971 s 21(1)).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

409 Offences relating to the operation of ships or aircraft

TEXT AND NOTES--As to offences relating to the operation of ships or aircraft, see now the Armed Forces Act 2006 s 31(hazarding of ship), s 32 (giving false air signals), s 33 (dangerous flying), s 34 (low flying), s 35 (annoyance by flying), and s 36 (inaccurate certification).

NOTE 14--The offence is one of strict liability: *R v Jackson* [2006] EWCA Crim 2380, [2006] All ER (D) 193 (Oct), C-MAC.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/410. Offences relating to, or committed by, persons in custody.

410. Offences relating to, or committed by, persons in custody.

Any person subject to naval discipline or to military or air force law¹ who wilfully allows any person committed to his charge, or whom it is his duty to guard², to escape, commits an offence for which he is liable to an unlimited term of imprisonment or any less punishment which may be provided for or authorised³.

A person subject to naval discipline or to military or air force law also commits an offence if:

- 375 (1) he releases, without proper authority, any person who is committed to his charge⁴;
- 376 (2) he without reasonable excuse allows any such person, or any person whom it is his duty to guard, to escape⁵;
- 377 (3) being concerned in any quarrel or disorder, he refuses to obey, uses violence to, or offers violence to, any officer⁶ who orders him into arrest⁷;
- 378 (4) he uses violence to, or offers violence to, any person⁸ whose duty it is to apprehend him, or in whose custody he is⁹; or
- 379 (5) he escapes from arrest, prison or other lawful custody (whether service custody or not)¹⁰.

A person guilty of any of these offences is liable to imprisonment for a term of not more than two years or any less punishment which may be provided for or authorised¹¹.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 The offence can be committed whether or not the person in the charge of the accused, or whom it was his duty to guard, was himself subject to service law.

3 Army Act 1955 s 54(1); Air Force Act 1955 s 54(1); Naval Discipline Act 1957 s 33A(1) (ss 33A-33C added by the Armed Forces Act 1971 s 22). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 54(1); Air Force Act 1955 s 54(1); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

A person charged under the Army Act 1955 or the Air Force Act 1955 with this offence may be found guilty of the lesser offence under the Army Act 1955 s 54(2) or the Air Force Act 1955 s 54(2) (see the text and notes 4-11 supra), as the case may be: Army Act 1955 s 98(6), Sch 3 para 10; Air Force Act 1955 s 98(6), Sch 3 para 10. If a person is charged under the Naval Discipline Act 1957, it seems that by virtue of s 67 (see para 469 ante) he can be found guilty of an offence under s 33A(2)(b) (as added) (see the text and note 5 infra) (this being the same offence as that charged, ie allowing a person in the offender's charge etc to escape, but with a different intent, involving a lesser degree of punishment). It is submitted, however, that he cannot be found guilty of committing an offence under s 33A(2)(a) (as added) (see the text and note 4 supra), this not being the same offence as the one charged.

4 Army Act 1955 s 54(2)(a); Air Force Act 1955 s 54(2)(a); Naval Discipline Act 1957 s 33A(2)(a) (all as added: see note 3 supra).

5 Army Act 1955 s 54(2)(b); Air Force Act 1955 s 54(2)(b); Naval Discipline Act 1957 s 33A(2)(b) (all as added: see note 3 supra). It is submitted that a person charged with this offence under the Naval Discipline Act 1957 could be found guilty of an offence under s 33A(2)(a) (as added) (see the text and note 4 supra), or vice versa, on proper evidence, by virtue of s 68(1)(b) (see para 469 post), although no provision corresponding to this is contained in the Army Act 1955 or the Air Force Act 1955.

6 For these purposes it does not matter whether or not the officer in question is the person's superior officer: Army Act 1955 s 55(1) (s 55(1), (2) amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2); Air Force Act 1955 s 55(1) (s 55(1), (2) amended by the Armed Forces Act 1986 s 4(1), Sch 2); Naval Discipline Act 1957 s 33B(1) (as added (see note 3 supra); and s 33B(1), (2) amended by the Armed Forces Act 1986 s 4(1), Sch 2). Although the definition of 'superior officer' in the Army Act 1955 s 33(2) and the Air Force Act 1955 s 33(2) (see para 400 note 4 ante) is not expressed as having any application to these provisions, it is submitted that they state the meaning of the expression as commonly understood and applied by the customs of the services, and that consequently the expression as it appears in the present context can be understood to have the same meaning.

7 Army Act 1955 s 55(1) (as amended: see note 6 supra); Air Force Act 1955 s 55(1) (as amended: see note 6 supra); Naval Discipline Act 1957 s 33B(1) (as added and amended: see notes 3, 6 supra).

8 For these purposes it does not matter whether or not the person whose duty it is to apprehend him or in whose custody he is, is subject to service law: Army Act 1955 s 55(2) (as amended: see note 6 supra); Air Force Act 1955 s 55(2) (as amended: see note 6 supra); Naval Discipline Act 1957 s 33B(2) (as added and amended: see notes 3, 6 supra).

9 Army Act 1955 s 55(2) (as amended: see note 6 supra); Air Force Act 1955 s 55(2) (as amended: see note 6 supra); Naval Discipline Act 1957 s 33B(2) (as added and amended: see notes 3, 6 supra).

10 Army Act 1955 s 56; Air Force Act 1955 s 56; Naval Discipline Act 1957 s 33C (as added: see note 3 supra). A person so charged may be found guilty of attempting to escape: see the Army Act 1955 s 98(2); the Air Force Act 1955 s 98(2); the Naval Discipline Act 1957 s 68(1)(a); and para 469 post. A person who escapes and subsequently remains absent could, in addition to being charged with desertion or absence without leave (as might be appropriate), also be charged with escaping from arrest, prison or other lawful custody.

11 Army Act 1955 ss 54(2), 55(3), 56; Air Force Act 1955 ss 54(2), 55(3), 56; Naval Discipline Act 1957 ss 33A(2), 33B(3), 33C (all as added: see note 3 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 ss 54(2), 55(3), 56; Air Force Act 1955 ss 54(2), 55(3), 56; Naval Discipline Act 1957 s 48(1).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

410 Offences relating to, or committed by, persons in custody

TEXT AND NOTES--As to offences relating to, or committed by, persons in custody, see now the Armed Forces Act 2006 s 28 (resistance to arrest), s 29 (offences in relation to service custody), and s 30 (allowing escape, or unlawful release, of prisoners etc).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/411. Offences in relation to courts-martial and other service courts.

411. Offences in relation to courts-martial and other service courts.

The following offences in the nature of contempt of a service court¹ can be committed by a person subject to naval discipline or to military or air force law²:

- 380 (1) failing to comply with a summons or order, duly issued or given, to attend³ as a witness⁴;
- 381 (2) refusing to swear on oath⁵ when duly required to do so⁶;
- 382 (3) refusing to produce any document or other thing in his custody or control which he has been lawfully required to produce⁷;
- 383 (4) refusing, when a witness, to answer any question which he has been lawfully required to answer⁸;
- 384 (5) wilfully insulting any member of the court, or any witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member of the court or so attending, or is going to or returning from the proceedings of the court⁹; and
- 385 (6) wilfully interrupting the proceedings of the court, or otherwise misbehaving before the court¹⁰.

Any person convicted of any of these offences is liable to imprisonment for not more than two years or any less punishment which may be provided for or authorised¹¹. Liability for punishment arises on conviction by court-martial¹². If, however, a court in relation to which any of these offences is committed is of the opinion that it is expedient for the offender to be dealt with summarily by the court instead of being brought to trial¹³, it may by order¹⁴ sentence him to imprisonment (or, if he is not an officer, detention)¹⁵ for not more than 21 days, or to a fine not exceeding the amount of his pay¹⁶ for 28 days¹⁷.

It is to be noted that dismissal is not a penalty under these provisions even if an accused is sentenced to imprisonment, which ordinarily involves automatic dismissal.

1 These provisions apply to a court-martial held under the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, or the law of any colony; to a judicial officer or a person appointed under the Army Act 1955 s 75L (as added), the Air Force Act 1955 s 75L (as added), or the Naval Discipline Act 1957 s 47M (as added) (see para 341 ante); and to the summary appeal court (ie the court established by the Army Act 1955 s 83ZA (as added), the Air Force Act 1955 s 83ZA (as added) (see para 365 ante) and the Naval Discipline Act 1957 s 52FF (as added) (see para 359 ante)): Army Act 1955 s 57(3), (4), (6) (s 57(3) amended by the Naval Discipline Act 1957 s 136, Sch 5, and by the Armed Forces Act 2001 s 38, Sch 7 Pt I; the Army Act 1955 s 57(4) added by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 1(1); and the Army Act 1955 s 57(6) added by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 1); Air Force Act 1955 s 57(3), (4), (6) (s 57(3) amended by the Naval Discipline Act 1957 Sch 5; and by the Armed Forces Act 2001 Sch 7 Pt I; the Air Force Act 1955 s 57(4) added by the Armed Forces Discipline Act 2000 Sch 1 para 1(2); and the Air Force Act 1955 s 57(6) added by the Armed Forces Discipline Act 2000 Sch 3 para 2); Naval Discipline Act 1957 s 38(2), (4), (5) (s 38(2) amended by the Armed Forces Act 2001 Sch 7 Pt I; the Naval Discipline Act 1957 s 38(4) added by the Armed Forces Discipline Act 2000 Sch 1 para 6; and the Naval Discipline Act 1957 s 38(5) added by the Armed Forces Discipline Act 2000 Sch 3 para 3). As to the meaning of 'colony' see para 20 note 4 ante.

2 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante. These provisions are in some circumstances extended to the service courts of visiting forces (see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 16, Sch 7) and, so far as deriving from the Army Act 1955, to standing civilian courts (see the Armed Forces Act 1976 s

6(17), Sch 3 para 15(1); and para 520 et seq post). Corresponding offences by persons not subject to naval discipline or to military or air force law are created by the Army Act 1955 s 101, the Air Force Act 1955 s 101, and the Naval Discipline Act 1957 s 65 (all as amended): see paras 467, 505 post. As to visiting forces and international headquarters see generally para 135 et seq ante.

3 As to the procedure for ordering or summoning a person to attend as a witness before a court-martial or the summary appeal court see the Army Act 1955 s 103(2)(h) (as substituted); the Air Force Act 1955 s 103(2)(h) (as substituted); the Naval Discipline Act 1957 s 64 (as amended); and para 498 post. See also the Courts-Martial (Army) Rules 1997, SI 1997/169, r 23; the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 21; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23; the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, r 30, Sch 4; the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 30, Sch 4; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 30, Sch 4.

4 Army Act 1955 s 57(1)(a); Air Force Act 1955 s 57(1)(a); Naval Discipline Act 1957 s 38(1)(a). As from a day to be appointed, new provision is made empowering service courts to compel the attendance of witnesses: see para 504 post.

5 'Oath' may include affirmation, and references to swearing are construed accordingly: see the Army Act 1955 s 225(1); the Air Force Act 1955 s 223(1); and the Naval Discipline Act 1957 s 38(1)(b). As to when a witness or other person may be permitted or required to make an affirmation see paras 315, 375 ante, 497 post. When and how oaths and affirmations are administered is a matter of law, which includes questions of practice and procedure for the judge advocate: see the Army Act 1955 s 84B(3) (as added); the Air Force Act 1955 s 84B(3) (as added); and the Naval Discipline Act 1957 s 53B(3) (as added); and paras 315 ante, 453 post. Oaths may be administered by the judge advocate or any other member of the court on his behalf: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 41(3); the Courts Martial (Royal Navy) Rules 1997, SI 1997/170, r 41(3); and the Courts Martial (Royal Air Force) Rules 1997, SI 1997/171, r 33(4).

6 Army Act 1955 s 57(1)(b); Air Force Act 1955 s 57(1)(b); Naval Discipline Act 1957 s 38(1)(b).

7 Army Act 1955 s 57(1)(c) (amended by the Armed Forces Act 2001 s 24(1), (2)(a)); Air Force Act 1955 s 57(1)(c) (amended by the Armed Forces Act 2001 s 24(1), (2)(c)); Naval Discipline Act 1957 s 38(1)(c) (amended by the Armed Forces Act 2001 s 24(1), (2)(e)).

8 Army Act 1955 s 57(1)(d); Air Force Act 1955 s 57(1)(d); Naval Discipline Act 1957 s 38(1)(d). At a court-martial no person may be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in England: see the Army Act 1955 s 99(1) (as amended); the Air Force Act 1955 s 99(1) (as amended); the Naval Discipline Act 1957 s 64A(1) (as added); and para 375 ante.

9 Army Act 1955 s 57(1)(e); Air Force Act 1955 s 57(1)(e); Naval Discipline Act 1957 s 38(1)(e). The persons whose duty it is to attend on or before the court will include: a waiting member or officer under instruction, the prosecuting and defending officers and counsel, interpreters, verbatim shorthand writers and any other persons who have been assigned duties at the trial.

10 Army Act 1955 s 57(1)(f); Air Force Act 1955 s 57(1)(f); Naval Discipline Act 1957 s 38(1)(f).

11 Army Act 1955 s 57(1); Air Force Act 1955 s 57(1); Naval Discipline Act 1957 s 38(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

12 Army Act 1955 s 57(1); Air Force Act 1955 s 57(1); Naval Discipline Act 1957 s 48(1). The court-martial must be a court-martial other than the one in relation to which the offence was committed (Army Act 1955 s 57(1); Air Force Act 1955 s 57(1); Naval Discipline Act 1957 s 48(3)), unless the offence in question was committed in relation to a judicial officer or a person appointed under either the Army Act 1955 s 75L (as added), the Air Force Act 1955 s 75L (as added), or the Naval Discipline Act 1957 s 47M (as added) (see para 341 ante), or in relation to the summary appeal court (Army Act 1955 s 57(4), (6); Air Force Act 1955 s 57(4), (6) (both as added: see note 1 supra)).

13 Ie, in relation to persons subject to military or air force law and unless the offence in question was committed in relation to a judicial officer, an appointed person or the summary appeal court, brought to trial before another court-martial: see the Army Act 1955 s 57(1), (5)(b), (7)(b) (s 57(5) added by the Armed Forces Discipline Act 2000 Sch 1 para 1(1); and the Army Act 1955 s 57(7) added by the Armed Forces Discipline Act 2000 Sch 3 para 1); the Air Force Act 1955 s 57(1), (5)(b), (7)(b) (s 57(5) added by the Armed Forces Discipline Act 2000 Sch 1 para 1(2); and the Air Force Act 1955 s 57(7) added by the Armed Forces Discipline Act 2000 Sch 3 para 2). See also note 12 supra.

14 Where an offence is committed in relation to a court-martial, but not where an offence is committed in relation to a judicial officer, the order is made under the hand of the president: see the Army Act 1955 s 57(2), (5)(a), (c) (s 57(5) as added: see note 13 supra); the Air Force Act 1955 s 57(2), (5)(a), (c) (s 57(5) as added:

see note 13 supra); and the Naval Discipline Act 1957 s 48(1). Where an offence is committed in relation to the summary appeal court by a person subject to military or air force law, the order is made under the hand of the judge advocate: see the Army Act 1955 s 57(2), (7)(a), (c) (s 57(7) as added: see note 13 supra); and the Air Force Act 1955 s 57(2), (7)(a), (c) (s 57(7) as added: see note 13 supra).

15 If the offender has attained the age of 17 but is under 21 years of age the power to impose a sentence of imprisonment has effect as if it were a power to make a custodial order under the Army Act 1955 s 71AA (as added and amended), the Air Force Act 1955 s 71AA (as added and amended), or the Naval Discipline Act 1957 s 43AA (as added and amended) (see para 433 post), as the case may be: Army Act 1955 s 57(2A); Air Force Act 1955 s 57(2A); Naval Discipline Act 1957 s 38(3A) (all added by the Criminal Justice Act 1982 s 58, Sch 8 para 1). As from a day to be appointed, the upper age limit for these purposes is reduced to 18: Army Act 1955 s 57(2A) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 12, 13); Air Force Act 1955 s 57(2A) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 20); Naval Discipline Act 1957 s 38(3A) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 27). At the date at which this volume states the law no such day had been appointed.

Where a person who is awarded a military sentence of imprisonment or detention is further sentenced to imprisonment or detention under these provisions, the court-martial (or, in the case of detention, officer) by whom the subsequent or further sentence is awarded may order that that sentence begins to run from the expiry of the first-mentioned sentence: see the Army Act 1955 s 118A(1), (2), (2A); the Air Force Act 1955 s 118A(1), (2), (2A); and the Naval Discipline Act 1957 s 86(1), (2), (2A) (all as added); and para 440 post.

16 For these purposes, a day's pay is the gross amount which is (or would, apart from any forfeiture, be) issuable to the offender for the day on which the order is made (Army Act 1955 s 57(2B)(a) (s 57(2B), (2C) added by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 4(2)); Air Force Act 1955 s 57(2B)(a) (s 57(2B), (2C) added by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 4(2)); Naval Discipline Act 1957 s 38(3B)(a) (s 38(3B), (3C) added by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 4(3))), unless the offender is a special member of a reserve force, in which case a day's pay is the gross pay which would have been issuable to him in respect of that day if he had been an ordinary member of that reserve force of the same rank (Army Act 1955 s 57(2B)(b) (as so added); Air Force Act 1955 s 57(2B)(b) (as so added); Naval Discipline Act 1957 s 38(3B)(b) (as so added)). As to special members and ordinary members of reserve forces see para 251 ante.

17 Army Act 1955 s 57(2) (amended by the Armed Forces Act 1971 ss 23(1), (2), 77(1), Sch 4 Pt I; and by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 4(1)(a)); Air Force Act 1955 s 57(2) (amended by the Armed Forces Act 1971 s 23(1), (2), Sch 4 Pt I; and by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 4(1)(a)); Naval Discipline Act 1957 s 38(3) (amended by the Armed Forces Act 1971 s 23(1), (3), Sch 4 Pt I; and by the Reserve Forces Act 1996 (Consequential Provisions) Regulations 1998, SI 1998/3086, reg 4(1)(b)).

A person punished summarily under the Army Act 1955 s 57(2) (as amended) or the Air Force Act 1955 s 57(2) (as amended) may not be subsequently tried by court-martial or a standing civilian court: see the Army Act 1955 s 134(1)(a), (2)(e) (s 134(1)(a) as substituted); the Air Force Act 1955 s 134(1)(a), (2)(e) (s 134(1)(a) as substituted); the Armed Forces Act 1976 s 6(17), Sch 3 para 16; and paras 486 ante, 521 post. The Naval Discipline Act 1957 contains no corresponding provisions, but it is submitted that the words 'dealt with summarily by the court instead of being brought to trial' in s 38(3) (as so amended) have the same effect, by making it clear that the legislature intended summary punishment by the court before which the offence is committed to be an alternative to a subsequent trial by court-martial or otherwise.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

411 Offences in relation to [Courts Martial] and other service courts

TEXT AND NOTES--As to offences of misbehaviour in court, see now the Armed Forces Act 2006 s 309, and as to the power to detain a person before dealing with an offence

under s 309, see s 310. For further provision about the making and effect of orders under s 309, see s 312. As to the certification of contempt of court offences to civil courts, see s 311.

NOTE 2--SI 1999/1736 Sch 7 amended: SI 2009/2054.

NOTES 3, 5--See now Armed Forces (Court Martial) Rules 2009, SI 2009/2041.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/412. Unauthorised disclosure of information.

412. Unauthorised disclosure of information.

It is an offence for any person subject to naval discipline or to military or air force law¹ without lawful authority either to disclose or to purport to disclose orally, in writing, by signal or by any other means information relating to any matter upon which information would or might be useful to an enemy².

A person guilty of such an offence is liable to a term of imprisonment for not more than two years, or any less punishment which may be provided for or authorised³. It is, however, a defence for a person charged with any such offence that he did not know, and had no reasonable cause to believe, that the information disclosed related to a matter upon which information would or might be directly or indirectly useful to an enemy⁴.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 Army Act 1955 s 60(1) (s 60 substituted by the Armed Forces Act 1971 s 24(1)); Air Force Act 1955 s 60(1) (s 60 substituted by the Armed Forces Act 1971 s 24(1), (2)); Naval Discipline Act 1957 s 34(1). As to the meaning of 'enemy' see para 305 note 1 ante. As to the alternative, more serious, charge of communicating with the enemy, which may be laid in these circumstances see para 393 ante. Another alternative open to the prosecution may be to prefer a charge, laid under the Army Act 1955 s 70 (as amended), the Air Force Act 1955 s 70 (as amended), or the Naval Discipline Act 1957 s 42 (as amended) (see para 422 post), of committing one or other of the civil offences created by the Official Secrets Acts 1911 to 1939: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 478 et seq. It is submitted that the charge of disclosing information imports that the information was correct; if the facts are otherwise, a charge of purporting to disclose information might be appropriate.

3 Army Act 1955 s 60(1) (as substituted: see note 2 supra); Air Force Act 1955 s 60(1) (as substituted: see note 2 supra); Naval Discipline Act 1957 s 34(1). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 60(1) (as so substituted); Air Force Act 1955 s 60(1) (as so substituted); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

4 Army Act 1955 s 60(2) (as substituted: see note 2 supra); Air Force Act 1955 s 60(2) (as substituted: see note 2 supra); Naval Discipline Act 1957 s 34(2).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

412 Unauthorised disclosure of information

TEXT AND NOTES--As to the disclosure of information useful to an enemy, see now the Armed Forces Act 2006 s 17. A person guilty of an offence under s 17 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 17(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/413. False statements on entry or enlistment.

413. False statements on entry or enlistment.

Any person who knowingly makes a false answer¹ to any question put to him² on offering himself for service in the Royal Navy, or seeking to be enlisted into the regular forces or the Royal Air Force, commits an offence³. If the offender subsequently becomes subject to the law of the service in respect of which he gave the false answer⁴, he may be tried and punished under the law of that service⁵.

1 The prosecution must prove both that the accused made the answer and that it was false. As to proving the fact of a person's enlistment in the army or air force, and the answers which he made to the questions then put to him in the army and air force, see para 377 ante. The prosecution must further prove that when the accused gave the answer in question he knew that it was false. As to the bearing of the Rehabilitation of Offenders Act 1974 on liability to prosecution under these provisions for making a false answer, see para 215 ante.

2 In the case of a naval entrant, the question must be one which was put to him by or on the direction of an officer or other person authorised to enter a person for naval service, and put to the entrant in connection with his entry into such service: Naval Discipline Act 1957 s 34A (added by the Armed Forces Act 1971 s 25). The authority to accept entrants for such service is conferred pursuant to regulations made by the Defence Council. In the case of an army or air force recruit, the question must be one put to him by or by the direction of the recruiting officer: Army Act 1955 s 61; Air Force Act 1955 s 61. As to the bearing of the Rehabilitation of Offenders Act 1974 on liability to prosecution under these provisions for making a false answer, see para 215 ante. As to improper enlistment see the Queen's Regulations for the Army 1975 para 5.211-5.218; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1098.

3 Army Act 1955 s 61; Air Force Act 1955 s 61; Naval Discipline Act 1957 s 34A (as added: see note 2 supra). For the meaning of 'regular forces' see para 191 ante. The offence is committed when the false statement is made, ie before the offender has become subject to naval discipline or to military or air force law (see note 4 infra), and is a civil offence punishable on summary conviction by imprisonment for not more than three months or a fine not exceeding level 1 on the standard scale. As to the standard scale see para 40 note 4 ante.

4 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

5 Army Act 1955 s 61; Air Force Act 1955 s 61; Naval Discipline Act 1957 s 34A (as added: see note 2 supra). A military or air force offender is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 1 on the standard scale: Army Act 1955 ss 19(1), 61 (s 19(1) amended by virtue of the Criminal Justice Act 1982 ss 38, 46); Air Force Act 1955 ss 19(1), 61 (s 19(1) amended by virtue of the Criminal Justice Act 1982 ss 38, 46). A naval offender is liable to imprisonment for not more than three months: Naval Discipline Act 1957 s 34A (as so added). In any case the offender is also liable to any less punishment which may be provided for or specified: Army Act 1955 s 61; Air Force Act 1955 s 61; Naval Discipline Act 1957 s 34A (as so added). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 61; Air Force Act 1955 s 61; Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

413 False statements on entry or enlistment

TEXT AND NOTES--Replaced. Regulations under the Armed Forces Act 2006 s 328 may make provision creating offences relating to knowingly giving false answers during the enlistment procedure: see s 328(2)(f). As to punishment for such offences see s 328(4). As to the regulations so made, see the Armed Forces (Enlistment) Regulations 2009, SI 2009/2057.

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414. Making of false official documents and related offences.

Any person subject to naval discipline or to military or air force law¹ commits an offence if he:

- 386 (1) makes², or makes an entry in³, an official document⁴, the document or entry being to his knowledge false in a material particular⁵;
- 387 (2) tampers with the whole or any part of such a document, whether by altering it, destroying it, suppressing it, removing it or otherwise⁶; or
- 388 (3) with intent to deceive fails to make an entry in any such document⁷.

A person guilty of this offence is liable to imprisonment for not more than two years or any less punishment which may be provided for or authorised⁸.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 For these purposes, a person who has signed or otherwise adopted as his own a document made by another is treated, as well as that other, as the maker of the document: Army Act 1955 s 62(2)(b) (s 62 substituted by the Civil Evidence Act 1955 s 15(1), Sch 1 para 1); Air Force Act 1955 s 62(2)(b) (s 62 substituted by the Civil Evidence Act 1955 Sch 1 para 2); Naval Discipline Act 1957 s 35(2)(b) (s 35 substituted by the Civil Evidence Act 1955 Sch 1 para 3).

3 Several items entered in a document on the same occasion, to achieve a single purpose, could, it is submitted, amount to a single entry and be made the subject of a single charge.

4 For these purposes, 'document' means anything in which information of any kind is recorded (Army Act 1955 s 62(3); Air Force Act 1955 s 62(3); Naval Discipline Act 1957 s 35(3) (all as substituted: see note 2 supra)); and a document is 'official' if it is or is likely to be made use of, in connection with the performance of his functions as such, by a person who holds office under, or is in the service of, the Crown (Army Act 1955 s 62(2)(a); Air Force Act 1955 s 62(2)(a); Naval Discipline Act 1957 s 35(2)(a) (all as so substituted)). Note that a person may be guilty of aiding, abetting, counselling, procuring or inciting the commission of this offence whether or not he knows the nature of the document in question: Army Act 1955 s 68A(2) (added by the Armed Forces Act 1971 s 32(2)); Air Force Act 1955 s 68A(2) (added by the Armed Forces Act 1971 s 32(2), (3)); Naval Discipline Act 1957 s 41(2) (substituted by the Armed Forces Act 1971 s 32(2), (4)(b)). As to the aiding and abetting of offences see para 421 post.

5 Army Act 1955 s 62(1)(a), (b); Air Force Act 1955 s 62(1)(a), (b); Naval Discipline Act 1957 s 35(1)(a), (b) (all as substituted: see note 2 supra). Thus the prosecution must prove: (1) that the document or entry was false; (2) that the falsity was in a material particular; and (3) that the falsity, and the materiality of it, were known to the accused at the time when he made the document or entry. To be material, a particular must be such as would be likely to influence the decision to be taken in consequence of the document: *R v Miller (Geoffrey)* (1983) Times, 6 June, C-MAC. It has been held in a case of perjury that a statement by a witness may be material if it renders another statement in his evidence more credible (*R v Tyson* (1867) LR 1 CCR 107), and it is submitted that this reasoning is applicable to the issue of materiality on a charge laid under any of these provisions.

6 Army Act 1955 s 62(1)(c); Air Force Act 1955 s 62(1)(c); Naval Discipline Act 1957 s 35(1)(c) (all as substituted: see note 2 supra). Where the charge is of tampering with a document, or with an entry in it, it is an essential ingredient, to be proved by the prosecution, that the effect of the alteration was to render the document or entry false in a material particular, to the knowledge of the accused.

7 Army Act 1955 s 62(1)(d); Air Force Act 1955 s 62(1)(d); Naval Discipline Act 1957 s 35(1)(d) (all as substituted: see note 2 supra). As to aiding and abetting, or inciting, the commission of an offence against any of these provisions, see para 432 note 6 post.

8 Army Act 1955 s 62(1); Air Force Act 1955 s 62(1); Naval Discipline Act 1957 s 35(1) (all as substituted: see note 2 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 62(1) (as so substituted); Air Force Act 1955 s 62(1) (as so substituted); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

414 Making of false official documents and related offences

TEXT AND NOTES--As to the offence of making false records, see now the Armed Forces Act 2006 s 18. A person guilty of an offence under s 18 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 18(6).

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415. Offences against the civilian population overseas.

Any person subject to naval discipline or to military or air force law¹ who, in any country or territory outside the United Kingdom², commits any offence³ against the person or property⁴ of any member of the civilian population is liable to imprisonment for not more than two years, or to any less punishment which may be provided for or authorised⁵.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the United Kingdom see para 20 notes 1-2 ante.

3 Since offences committed outside the United Kingdom which are punishable by the law of England, or would be so punishable if committed in England, are triable and punishable by court-martial (see the Army Act 1955 s 70 (as amended); the Air Force Act 1955 s 70 (as amended); the Naval Discipline Act 1957 s 42 (as amended); and para 422 post), it is to be assumed that the provision under consideration has a different purpose, which (it is submitted) is to make provision for the trial and punishment under each of the service discipline Acts of persons subject to one or other of them who, outside the United Kingdom, behave, in relation to the persons or property of the population of the territory in which they are stationed or present in a manner punishable under the local criminal law but which would not be punishable, if it occurred in England, under the law of England. This provision would seem to be intended for use in areas where the civil courts are no longer operating, and also, in other areas, to assist the service authorities to secure the agreement of the authorities of an overseas territory to such behaviour being dealt with under the service discipline Acts instead of by the local criminal courts. As to the service discipline Acts see para 302 ante.

4 For the meaning of 'property' see para 305 note 3 ante.

5 Army Act 1955 s 63; Air Force Act 1955 s 63; Naval Discipline Act 1957 s 35A (added by the Armed Forces Act 1971 s 27). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 63; Air Force Act 1955 s 63; Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/416. Offences harmful to morale.

416. Offences harmful to morale.

It is an offence for any person subject to naval discipline or to military or air force law¹ to spread (whether orally, in writing, by signal or otherwise) reports likely to cause despondency or unnecessary alarm² and relating to operations of Her Majesty's forces³ or any forces co-operating with them or any part of any of those forces⁴.

A person convicted of such an offence is liable to imprisonment for not more than two years, or any less punishment which may be provided for or authorised⁵.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 There is nothing in the words of the enactments creating this offence to indicate that it is necessary to prove that the report was false, or that any despondency or alarm was actually caused, or that the despondency or unnecessary alarm would be felt by servicemen or women.

3 For the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

4 Army Act 1955 s 63A (added by the Armed Forces Act 1971 s 28(1)); Air Force Act 1955 s 63A (added by the Armed Forces Act 1971 s 28(1), (2)); Naval Discipline Act 1957 s 35B (added by the Armed Forces Act 1971 s 28(1), (3)).

5 Army Act 1955 s 63A; Air Force Act 1955 s 63A; Naval Discipline Act 1957 s 35B (all as added: see note 4 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 63A (as so added); Air Force Act 1955 s 63A (as so added); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/ (ii) Offences triable under the Service Discipline Acts/417. Scandalous or disgraceful conduct.

417. Scandalous or disgraceful conduct.

Any officer¹ subject to naval discipline or to military or air force law² who behaves in a scandalous manner unbecoming the character of an officer³ is guilty of an offence punishable with dismissal from Her Majesty's service with or without disgrace⁴. Any person so subject who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind⁵ commits an offence punishable with imprisonment for not more than two years, or any less punishment which may be provided for or authorised⁶.

1 For the meaning of 'officer' for the purposes of the Naval Discipline Act 1957 see para 152 ante. 'Officer' is not defined in the Army Act 1955 and the Air Force Act 1955, but, according to the custom of both services, when used without an adjective it denotes a person holding Her Majesty's commission as an officer, and does not include an officer cadet who, for disciplinary purposes, ranks as a private soldier.

2 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

3 The words 'unbecoming the character of an officer' are used adjectivally to explain or qualify the meaning of the words 'behaves in a scandalous manner'. It is an ingredient of the offence that the behaviour must be not only scandalous, but also unbecoming the character of an officer.

4 Army Act 1955 s 64 (substituted by the Armed Forces Act 1971 s 29(1)); Air Force Act 1955 s 64 (substituted by the Armed Forces Act 1971 s 29(1), (2)); Naval Discipline Act 1957 s 36 (amended by the Armed Forces Act 1971 s 29(3)). Liability for dismissal arises on conviction by court-martial: Army Act 1955 s 64 (as so substituted); Air Force Act 1955 s 64 (as so substituted); Naval Discipline Act 1957 s 48(1). Although the only punishments open to a court-martial which finds an accused guilty of this offence are dismissal from the service with disgrace or without disgrace, in the army and air force, since the reviewing authority can only substitute a sentence which would have been open to the court-martial, dismissal with disgrace could be reduced on review to dismissal simpliciter but dismissal cannot be reduced because no lesser sentence would have been available to the court-martial: see the Army Act 1955 s 113AA(4) (as added); the Air Force Act 1955 s 113AA(4) (as added); and para 512 post.

5 The statement of offence in the charge-sheet must specify whether the disgraceful conduct is alleged to have been cruel, indecent or unnatural: see the Courts Martial (Army) Rules 1997, SI 1997/169, r 8, Sch 1 para 3; the Courts Martial (Royal Navy) Rules 1997, SI 1997/170, r 6, Sch 1 para 3; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 8, Sch 1 para 3. There is nothing in the words of the enactments creating these offences which limits the kinds of conduct which may be made the subject of a charge to matters which do not, or which do, amount to a criminal offence under the civil law. For example, indecent exposure is frequently charged in this way, even when the evidence would support a charge of the civil offence of indecent exposure, which could be laid under the Army Act 1955 s 70 (as amended), the Air Force Act 1955 s 70 (as amended), or the Naval Discipline Act 1957 s 42 (as amended) (see para 422 post); consensual homosexual activity will not normally result in a charge unless the accused has misused his authority.

6 Army Act 1955 s 66; Air Force Act 1955 s 66; Naval Discipline Act 1957 s 37 (amended by the Armed Forces Act 1971 s 31). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 66; Air Force Act 1955 s 66; Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law,

see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

417 Scandalous or disgraceful conduct

TEXT AND NOTES--As to disgraceful conduct of a cruel or indecent kind, see now the Armed Forces Act 2006 s 23. A person guilty of an offence under s 23 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 23(3).

NOTE 5--See now the Armed Forces (Court Martial) Rules 2009, SI 2009/2041.

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418. Ill-treatment of persons of inferior rank.

It is an offence:

- 389 (1) for any officer¹ subject to naval discipline or to military or air force law² to ill-treat any officer of inferior rank or less seniority who is subject to the same code of service discipline as himself³;
- 390 (2) for any officer subject to military or air force law to ill-treat any warrant officer⁴, non-commissioned officer⁵, soldier or, as the case may be, airman, so subject⁶;
- 391 (3) for any officer subject to naval discipline to ill-treat any rating⁷ so subject⁸;
- 392 (4) for any warrant officer or non-commissioned officer subject to military or air force law to ill-treat any warrant officer or non-commissioned officer of inferior rank or less seniority, or any soldier or, as the case may be, airman, so subject⁹;
- 393 (5) for any rating subject to naval discipline of or above the rank of leading seaman to ill-treat any rating of inferior rate or less seniority so subject¹⁰.

Such an offence is punishable with imprisonment for not more than two years or any less punishment which may be provided for or authorised¹¹.

1 As to the meaning of 'officer' see para 417 note 1 ante.

2 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

3 Army Act 1955 s 65(a) (s 65(a), (b) amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2); Air Force Act 1955 s 65(a) (s 65(a), (b) amended by the Armed Forces Act 1986 s 4(1), Sch 2); and the Naval Discipline Act 1957 s 36A(a) (s 36A added by the Armed Forces Act 1971 s 30; Naval Discipline Act 1957 s 36A(a), (b) amended by the Armed Forces Act 1986 ss 4(1), 16(2), Sch 2).

4 As to references to warrant officers see para 336 note 6 ante.

5 As to references to non-commissioned officers see para 336 note 7 ante.

6 Army Act 1955 s 65(a); Air Force Act 1955 s 65(a) (both as amended: see note 3 supra).

7 For the meaning of 'rating' see para 156 note 1 ante.

8 Naval Discipline Act 1957 s 36A(a) (as added and amended: see note 3 supra).

9 Army Act 1955 s 65(b); Air Force Act 1955 s 65(b) (both as amended: see note 3 supra).

10 Naval Discipline Act 1957 s 36A(b) (as added and amended: see note 3 supra).

11 Army Act 1955 s 65; Air Force Act 1955 s 65; Naval Discipline Act 1957 s 36A (as added: see note 3 supra). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 65; Air Force Act 1955 s 65; Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

418 Ill-treatment of persons of inferior rank

TEXT AND NOTES--As to the ill-treatment of subordinates, see now the Armed Forces Act 2006 s 22. A person guilty of an offence under s 22 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 22(3).

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419. Conduct or neglect to the prejudice of good order and discipline.

Any person subject to naval discipline or to military or air force law¹ who is guilty, whether by any act or omission or otherwise, of conduct to the prejudice of good order and naval, military or air force discipline, as the case may be, commits an offence for which he is liable to imprisonment for not more than two years or any less punishment which may be provided for or authorised².

¹ As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

² Army Act 1955 s 69 (amended by the Armed Forces Act 1986 s 4(2)); Air Force Act 1955 s 69 (amended by the Armed Forces Act 1986 s 4(2)); Naval Discipline Act 1957 s 39 (amended by the Armed Forces Act 1971 ss 33, 77(1), Sch 4 Pt I; and by the Armed Forces Act 1986 s 4(2)). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 69 (as so amended); Air Force Act 1955 s 69 (as so amended); Naval Discipline Act 1957 s 48(1). There is no distinction between punishments provided for and punishments authorised: see para 391 note 5 ante.

The scope of this offence is largely governed by the settled custom and practice of the navy, army and air force. The following points are applicable to the practice of each of the services:

- 107 (1) Where the alleged offence consists in an act or a series of acts, or a continuing course of conduct, it is properly charged as conduct.
- 108 (2) Whether the conduct alleged in any particular instance is capable of being prejudicial to good order and service discipline is a question of law; whether it was in fact prejudicial in the circumstances is a question of fact.
- 109 (3) Ordinarily the only intent which must be proved is the intent to do the act alleged in the particulars of the charge but in some cases in order to make the conduct alleged an offence it may be necessary to prove a further mental element, for instance it may not be an offence to make an inaccurate entry in a document or log unless the accused knew or ought to have known that it was inaccurate. If conduct involves dishonesty the accused should be charged with theft, deception etc and not under these provisions. If, however, the conduct alleged does, in reality, involve dishonesty then dishonesty must be proved whether it is alleged in the particular case or not. In any case where intent beyond the intention to commit the act alleged is involved the matter should be raised with the judge advocate, sitting alone before speeches: *R v Dodman* [1998] 2 Cr App R 338, C-MAC.
- 110 (4) Acts or omissions which occur on board a ship or aircraft, or in a naval, military or air force barracks, camp, station or other establishment, and which are prejudicial to good order, are, generally speaking, prejudicial also to service discipline, but a service court or other disciplinary authority must decide each case on its own facts. If the misbehaviour occurred away from any service establishment, and was not directly connected with service duties or affairs, such factors as place, company and the surrounding circumstances must be taken into account, and in general the test is whether what occurred was prejudicial to the discipline of others subject to naval discipline or to military or air force law: see *R v Davies*, *R v Hamilton* [1980] Crim LR 582, C-MAC. It is submitted that it must be proved that the conduct caused actual, not potential, prejudice to both good order and military discipline.
- 111 (5) The words 'goods order' are considered to be wide enough to include good order in the ordinary sense of these words in civil life, as well as that in which they would be used in service life with reference to service personnel. Behaviour which is prejudicial to good order in the first sense may not be prejudicial to service discipline, but, conversely, behaviour prejudicial to service discipline is likely also to be prejudicial to good order in the second sense.

- 112 (6) Examples of the type of behaviour customarily charged as conduct to the prejudice of good order and discipline are failing to take reasonable care to ensure that a cheque which the accused has issued is honoured on presentation (but, if fraud is alleged, a charge of committing a civil offence, such as obtaining property or a pecuniary advantage by deception, laid under the Army Act 1955 s 70 (as amended), the Air Force Act 1955 s 70 (as amended), or the Naval Discipline Act 1957 s 42 (as amended) (see para 422 post), as the case may be, is likely to be preferred). It may be questionable to what extent, if any, dishonouring a cheque made out to a civilian business is prejudicial either to good order or military discipline. If the accused is an officer, a charge of scandalous conduct (see para 417 ante) may be more appropriate than a charge under these provisions. Other common charges are improper borrowing from subordinates; improper use of a vehicle which is public or service property; improper possession of public or service property (where theft cannot be proved); negligent discharge of a round; and negligent driving of a service vehicle.
- 113 (7) To secure a conviction, the prosecution must prove: (a) the occurrence of the behaviour alleged in the particulars of the charge; and (b) that it was prejudicial both to good order and to naval, military or air force discipline, as the case may be.
- 114 (8) Acts or omissions which constitute offences under other provisions of the service discipline Acts may also amount to conduct prejudicial to good order and service discipline, but it is not considered proper (although it is not unlawful) to charge them as such merely to circumvent a defence which would be open to the accused if he were charged with an offence specifically covering his behaviour (eg contravening standing orders, if charged as such, affords a defence that the accused could not reasonably be expected to have known of the orders (see para 402 ante), but not so if charged as conduct to the prejudice of good order and discipline). Charges should not be framed as conduct to the prejudice of good order and discipline merely to secure that they can be dealt with summarily. To misuse charges under these provisions may invite an abuse of process application.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

419 Conduct or neglect to the prejudice of good order and discipline

TEXT AND NOTES--As to conduct prejudicial to good order and discipline, see now the Armed Forces Act 2006 s 19. A person guilty of an offence under s 19 is liable to any punishment mentioned in s 164(1) (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed two years: see s 19(3).

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420. Attempts to commit service offences.

Any person subject to naval discipline or to military or air force law¹ who attempts² to commit an offence against any of the disciplinary provisions of the service discipline Act³ to which he is subject is guilty of an offence, rendering him liable on conviction to the like punishment as for the substantive offence in question⁴.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to an attempt to commit an offence see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 79 et seq. Some of the offences triable under the service discipline Acts (see para 392 et seq ante) are in their nature such that it will rarely be feasible to charge a person with an attempt to commit one of them. For example, an attempt by an officer to conduct himself scandalously (see para 417 ante), or an attempt at conduct to the prejudice of good order and service discipline (see para 419 ante), might well in themselves be sufficient to comprise the substantive offence.

Further, in the case of the offence of desertion (see para 404 ante), if the potential offender's purpose is abandoned or frustrated before he has actually gone absent, what he has done would probably amount to no more than preparation, as opposed to an attempt, to desert, while if he does go absent, with the intention to desert, the offence of desertion is complete at the very moment of his going absent. Also, if a serving member of the forces were to enlist, without disclosing that he was already a member of the forces, and his deception were at once discovered and his purpose thereby frustrated, it is submitted that he would thus be guilty of attempted desertion (see para 404 ante).

3 As to the service discipline Acts see para 302 ante.

4 Army Act 1955 s 68 (amended by the Armed Forces Act 1971 s 32(1); and by the Armed Forces Act 2001 s 38, Sch 7 Pt 4); Air Force Act 1955 s 68 (amended by the Armed Forces Act 1971 s 32(1); and by the Armed Forces Act 2001 Sch 7 Pt 4); Naval Discipline Act 1957 s 40 (amended by the Armed Forces Act 2001 Sch 7 Pt 4). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 68 (as so amended); Air Force Act 1955 s 68 (as so amended); Naval Discipline Act 1957 s 48(1).

A person charged with attempting to commit an offence (including a civil offence: see para 422 post) may be found guilty as charged, even though it is proved that he actually committed the substantive offence: Army Act 1955 s 98(3), (4); Air Force Act 1955 s 98(3), (4); Naval Discipline Act 1957 s 69. A person charged with any offence (excluding, in relation to a person subject to naval discipline, a civil offence) may be found guilty, on appropriate evidence, of attempting to commit the offence charged: Army Act 1955 s 98(2); Air Force Act 1955 s 98(2); Naval Discipline Act 1957 s 68(1)(a). As to whether an attempt to commit an offence can form a charge under the Army Act 1955 s 70 (as amended), the Air Force Act 1955 s 70 (as amended) or the Naval Discipline Act 1957 s 42 (as amended) (liability for civil offences: see para 422 post) see the Criminal Attempts Act 1981 s 1(4); CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 79.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

420 Attempts to commit service offences

TEXT AND NOTES--As to attempts to commit service offences, see now the Armed Forces Act 2006 s 39.

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421. Aiding and abetting service offences; incitement.

Any person subject to naval discipline or to military or air force law¹ who aids, abets, counsels or procures² the commission by another person³ of, or incites⁴ another person to commit, an offence against any of the disciplinary provisions of the service discipline Act⁵ to which he is subject is guilty of the offence in question, and is liable to be charged, tried and punished accordingly⁶.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to complicity in crime generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 49 et seq.

3 As what is contemplated is the aiding, abetting, counselling or procuring of an offence against whichever of the service discipline Acts is applicable, it follows that the person aided, abetted etc must himself be subject to that Act.

4 As to incitement see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 65. It is submitted that in service law incitement to commit a service offence could also be charged under the provisions relating to conduct prejudicial to good order or discipline (see para 419 ante). However, it is not good practice to use such provisions as a 'catch all'. In service law, there is also a specific offence of incitement to mutiny: see para 399 ante.

5 As to the service discipline Acts see para 302 ante.

6 Army Act 1955 s 68A(1) (added by the Armed Forces Act 1971 s 32(2)); Air Force Act 1955 s 68A(1) (added by the Armed Forces Act 1971 s 32(2), (3)); Naval Discipline Act 1957 s 41(1) (substituted by the Armed Forces Act 1971 s 32(2), (4)(a)). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 68A(1) (as so added); Air Force Act 1955 s 68A(1) (as so added); Naval Discipline Act 1957 s 48(1).

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

421 Aiding and abetting service offences; incitement

TEXT AND NOTES--As to encouraging and assisting service offences by persons subject to service law, see now the Armed Forces Act 2006 s 40 (substituted by the Serious Crime Act 2007 Sch 5 paras 7, 9). As to aiding, abetting, counselling or procuring, see the Armed Forces Act 2006 s 41.

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422. Civil offences.

Any person subject to naval discipline or to military or air force law¹ who commits a civil offence², whether in the United Kingdom or elsewhere³, is guilty of an offence against whichever of the service discipline Acts⁴ is applicable to him and may be tried for the offence under the relevant Act⁵. If the corresponding civil offence⁶ is one for which the sentence is fixed by law as imprisonment for life, the offender must be so sentenced⁷. In any other case, the offender is liable to suffer any punishment or punishments (in the case of an offender subject to military or air force law, for which provision is made by the service discipline Act under which the offender is tried) which a civil court⁸ could award for the corresponding civil offence if committed in England, or any punishment (for which provision is so made) less than the maximum which a civil court could so award⁹, except that if the corresponding civil offence is a second serious offence¹⁰ or a third class A drug trafficking¹¹ or burglary¹² offence, the court-martial must impose the sentence required by statute¹³ unless it is of the opinion that there are exceptional circumstances which justify its not so doing¹⁴.

A person subject to naval discipline or to military or air force law may not, however, be so tried for a civil offence of treason¹⁵, murder¹⁶, manslaughter¹⁷, treason felony¹⁸ or rape¹⁹, an offence under any of the Geneva Conventions²⁰, an offence in connection with biological or chemical weapons²¹, or an offence under the legislation relating to genocide, crimes against humanity or war crimes²².

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 'Civil offence' means any act or omission punishable by the law of England or which would be so punishable if committed there: Army Act 1955 s 70(2); Air Force Act 1955 s 70(2); Naval Discipline Act 1957 s 42(1). An attempt to commit an offence triable in England or Wales only as a non-indictable offence is not, however, a criminal attempt and is not a civil offence for the purposes of the service discipline Acts: see the Criminal Attempts Act 1981 s 1(4); the Army Act 1955 s 70(2A) (added by the Criminal Attempts Act 1981 s 7(1)); the Air Force Act 1955 s 70(2A) (added by the Criminal Attempts Act 1981 s 7(1)); the Naval Discipline Act 1957 s 42(2A) (added by the Criminal Attempts Act 1981 s 7(1)); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 79.

3 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante. The words 'whether in the United Kingdom or elsewhere' appear in the Army Act 1955 s 70(1) and the Air Force Act 1955 s 70(1), but not in the Naval Discipline Act 1957 s 42(1); however, see s 48(1); and para 303 ante.

4 As to the service discipline Acts see para 302 ante.

5 Army Act 1955 s 70(1); Air Force Act 1955 s 70(1); Naval Discipline Act 1957 s 42(1) (amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 Pt 6 para 34(1), (2), Sch 7 Pt 7). The effect of these provisions is as follows:

115 (1) These are offence-creating provisions by which an act or omission which, if committed in England, would be punishable in the English civil courts under English law becomes an offence against the service discipline Acts, punishable by service courts or by commanding officers or appropriate superior authorities where they have jurisdiction (see para 355 ante), and may be such an offence, and so punishable, even though it is committed abroad: *R v Page* [1954] 1 QB 170, [1953] 2 All ER 1355, C-MAC; *Cox v Army Council* [1963] AC 48 at 67-69, [1962] 1 All ER 880 at 881-883, HL, per Viscount Simonds. Where the act or omission in question has occurred abroad, it will be punishable as a civil offence under the relevant service discipline Act only if there is a sufficient degree of similarity between the act or omission committed abroad and that constituting the offence capable of being committed in England so as to render the latter fairly

translatable so as to apply to the former: see *Cox v Army Council* supra, where the House of Lords upheld the conviction by court-martial in Germany of a soldier serving there on a charge of committing a civil offence in Germany, contrary to the Army Act 1955 s 70(1), ie driving a motor car without due care and attention on a road in Germany.

- 116 (2) A person subject to service law may be charged with an offence under these provisions even though on the same facts he could be charged with an offence against any other provision of the relevant service discipline Act: Army Act 1955 s 70(6) (added by the Armed Forces Act 1971 s 34(1)(b)); Air Force Act 1955 s 70(6) (added by the Armed Forces Act 1971 s 34(1)(b), (2)); Naval Discipline Act 1957 s 42(2).
- 117 (3) Where a person subject to one of the service discipline Acts is alleged to have committed a civil offence in the United Kingdom, the question whether he should be tried by a civil court or a service court is decided in accordance with Queen's Regulations: see the Manual of Naval Law vol I Ch 1 art J.0147 et seq; the Queen's Regulations for the Army 1975 para J7.001 et seq; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 14 para J944 et seq. It has been held that where an offence relating to government property has been committed by a person subject to one or other of the service discipline Acts at the place where he is serving, the proper authority to deal with the matter is the commanding officer of the offender, so that it may be dealt with under service law, and that the civil police should not interfere: *R v Kirkup* (1950) 34 Cr App Rep 150, CCA. Where a civil offence has been committed by a serviceman outside the United Kingdom, choice of jurisdiction (ie between the local civil courts and service law) is governed by treaties or other international engagements (usually known as Status of Forces Agreements): see para 303 ante. In the wake of *R v Martin (Alan)* [1998] AC 917, [1998] 1 All ER 193, HL, where it was held that it was not an abuse of process to try a civilian juvenile dependant by court-martial in Germany, the commanding officer in the army and air force must report the matter to higher authority so that the law officers can decide whether the trial should be before the Crown Court in England or a court-martial; see, however, the Manual of Naval Law vol I Ch 1; the Queen's Regulations for the Army 1975 para J7.016A; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 14 para J950.
- 118 (4) Few of the offences chargeable and triable as civil offences under these provisions can be dealt with summarily, and those which can are all offences of a relatively minor nature: see para 355 ante.
- 119 (5) Any person charged under one of the service discipline Acts with committing a civil offence may be found guilty of an attempt to commit the offence charged: Army Act 1955 s 98(2); Air Force Act 1955 s 98(2); Naval Discipline Act 1957 s 68(2). A person charged with attempting to commit a civil offence may be found guilty as charged, notwithstanding that it is proved that he actually committed the civil offence: Army Act 1955 s 98(4); Air Force Act 1955 s 98(4); Naval Discipline Act 1957 s 69.
- 120 (6) A person charged under one of the service discipline Acts with committing a civil offence who is proved to have committed a civil offence other than the one charged may be found guilty of the offence proved, if it is one of which he could have been found guilty by a civil court in England on a trial for the offence corresponding to the one with which he was charged before the court-martial: Army Act 1955 s 98(5); Air Force Act 1955 s 98(5); Naval Discipline Act 1957 s 68(2).

As to time limits for the commencement of the trial by court-martial of offences charged under these provisions see para 304 ante; and note that, other than in relation to the Army Act 1955 s 132(3A) (as added), the Air Force Act 1955 s 132(3A) (as added), and the Naval Discipline Act 1957 s 52(3) (as substituted and amended) (see para 304 ante), the consent of the Attorney General or the Director of Public Prosecutions is not required in connection with any proceedings under the service discipline Acts (see the Army Act 1955 s 204A (added by the Armed Forces Act 1971 s 45(1); and amended by the Armed Forces Act 1991 s 26, Sch 2 para 6(1)); the Air Force Act 1955 s 204A (added by the Armed Forces Act 1971 s 45(1); and amended by the Armed Forces Act 1991 Sch 2 para 6(1)); and the Naval Discipline Act 1957 s 129A (added by the Armed Forces Act 1971 s 45(2); and amended by the Armed Forces Act 1991 Sch 2 para 6(2))). The application of military procedures to the trial of civil offences by army and air force courts-martial has been held not to violate the right to a fair hearing before an independent and impartial tribunal enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 140): see *R v Spear* [2002] UKHL 31, [2003] 1 AC 734, [2002] 3 All ER 1074; affg [2001] EWCA Crim 3, [2001] QB 804, [2001] 2 WLR 1692.

6 In the Army Act 1955 and the Air Force Act 1955, 'corresponding civil offence' means the civil offence the commission of which constitutes the offence against the service discipline Act applicable to the offender: Army Act 1955 s 70(2); Air Force Act 1955 s 70(2). The expression is not used in the Naval Discipline Act 1957 but it is submitted that the effect of these provisions in their totality is no different from what it would have been had the actual words 'corresponding civil offence' been used.

7 Army Act 1955 s 70(3)(aa) (added by the Murder (Abolition of Death Penalty) Act 1965 s 1(4); and substituted by the Armed Forces Act 2001 Sch 6 Pt 6 para 33); Air Force Act 1955 s 70(3)(aa) (added by the Murder (Abolition of Death Penalty) Act 1965 s 1(4); and substituted by the Armed Forces Act 2001 Sch 6 Pt 6 para 33); Naval Discipline Act 1957 s 42(1)(b) (substituted by the Armed Forces Act 2001 Sch 6 Pt 6 para 34(1), (3)). The provisions as to sentencing are stated to be subject to the statutory provisions limiting the punishments which may be imposed on juveniles (as to which see para 431 et seq post): see the Army Act 1955 s 70(3) (amended by the Armed Forces Act 1976 s 10(3)); the Air Force Act 1955 s 70(3) (amended by the Armed Forces Act 1976 s 10(3)); and the Naval Discipline Act 1957 s 42(1) (amended by the Armed Forces Act 2001 Sch 6 Pt 6 para 34(1), (2)).

8 For the meaning of 'civil court' see para 57 note 2 ante.

9 Army Act 1955 s 70(3)(b); Air Force Act 1955 s 70(3)(b); Naval Discipline Act 1957 s 42(1)(c) (substituted by the Armed Forces Act 1971 s 34(3); and amended by the Armed Forces Act 1986 s 16(1), (2), Sch 1 para 3, Sch 2; and by the Armed Forces Act 2001 Sch 6 Pt 6 para 34(1), (4)). Liability for punishment arises on conviction by court-martial: Army Act 1955 s 70(3); Air Force Act 1955 s 70(3); Naval Discipline Act 1957 s 48(1).

The effect of these provisions (subject to the statutory provisions limiting the punishments which may be imposed on juveniles: see para 431 et seq post) is:

- 121 (1) For treason, murder, and genocide involving the murder of any person, a fixed punishment is provided.
- 122 (2) For all other offences chargeable under these provisions, a court-martial may award only one of the kinds of punishment for which provision is made by the service discipline Act under which the court-martial is held, and these do not precisely coincide in each of the three Acts or with those available to the English civil courts. A court-martial may award the maximum amount of the punishment or punishments which a civil court could award for the corresponding civil offence committed in England, in so far as any such punishment is one for which the applicable discipline Act makes provisions; any punishment less than the maximum which a civil court could so award may also be awarded by a court-martial being a kind of punishment for which provision is made by the applicable discipline Act. For the statutory and other rules governing sentencing see para 434 et seq.

Where the corresponding civil offence is a sexual offence to which the Sex Offenders Act 1997 Pt I (ss 1-6) (as amended) applies (see s 1(9), Sch 1 para 1), the provisions of Pt I (as amended), which require an offender to notify the police of his whereabouts, are applicable to the offender: see Sch 1 para 4.

10 Is an offence to which the Powers of Criminal Courts (Sentencing) Act 2000 s 109 (as amended) would apply.

11 Is an offence to which the Powers of Criminal Courts (Sentencing) Act 2000 s 110 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 772) would apply.

12 Is an offence to which the Powers of Criminal Courts (Sentencing) Act 2000 s 111 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 294) would apply.

13 Is the sentence required by the Powers of Criminal Courts (Sentencing) Act 2000 s 109(2) (as amended), s 110(2) (as amended) or s 111(2) (as amended), as the case may be: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 77.

14 Army Act 1955 s 70(3A) (added by the Crime (Sentences) Act 1997 s 55, Sch 4 para 1(1); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 8); Air Force Act 1955 s 70(3A) (added by the Crime (Sentences) Act 1997 Sch 4 para 2(1); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 13); Naval Discipline Act 1957 s 42(1A) (added by the Crime (Sentences) Act 1997 Sch 4 para 3(1); and amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 18).

As from a day to be appointed, new provision is made for the sentencing of offenders found guilty of second serious offences or third class A drug trafficking or burglary offences. Where a person is convicted of an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70, or the Naval Discipline Act 1957 s 42 (all as amended) the corresponding civil offence of which is a serious offence (within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 s 109 (as amended)), and that person was at the time of the offence aged 18 or over and had previously been convicted of a serious offence or an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70, or the Naval Discipline Act 1957 s 42 (all as amended) constituted by a civil offence which is a serious offence, the court-martial must sentence him to life imprisonment, unless it is of the opinion that there are exceptional circumstances relating to the offences or to the offender which justify its not so doing (providing that an offence the sentence for which is so imposed is not to be regarded as an offence

the sentence for which is fixed by law): Army Act 1955 s 70(3)(ac), (3A)-(3C), (7) (s 70(3A) as so added; s 70(3)(ac), (3B)-(3H), (7) prospectively added, and s 70(3A) prospectively substituted, by the Armed Forces Act 2001 s 22(1), Sch 3 para 1); Air Force Act 1955 s 70(3)(ac), (3A)-(3C), (7) (s 70(3A) as so added; s 70(3)(ac), (3B)-(3H), (7) prospectively added, and s 70(3A) prospectively substituted, by the Armed Forces Act 2001 Sch 3 para 2); Naval Discipline Act 1957 s 42(1)(ba), (1A)-(1C), (3) (s 42(1A) as so added; s 42(1)(ba), (1B)-(1H), (3) prospectively added, and s 42(1A) prospectively substituted, by the Armed Forces Act 2001 Sch 3 para 5). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, it is further provided that where the court-martial, being required to sentence such an offender to life imprisonment, exercises its discretion to impose a lesser sentence because it is of the opinion that there are exceptional circumstances relating to the offences or the offender which justify its not so doing, it must state in open court that it is of that opinion and what the exceptional circumstances are: Army Act 1955 s 70B(1) (ss 70A, 70B prospectively added by the Armed Forces Act 2001 Sch 3 para 3); Air Force Act 1955 s 70B(1) (ss 70A, 70B prospectively added by the Armed Forces Act 2001 Sch 3 para 3); Naval Discipline Act 1957 s 42B(1) (ss 42A, 42B prospectively added by the Armed Forces Act 2001 Sch 3 para 6). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, where a person is convicted of an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70, or the Naval Discipline Act 1957 s 42 (all as amended) the corresponding civil offence of which is either a class A drug trafficking offence (ie within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 s 110 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 772)) or a domestic burglary (ie within the meaning of s 111 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue para 294)), and that person was at the time of the offence aged 18 or over and had previously been convicted of two other offences each of which:

- 123 (1) in the case of a person convicted of a drug trafficking offence, was either a class A drug trafficking offence or an offence constituted by a civil offence which is a class A drug trafficking offence; or
- 124 (2) in the case of a person convicted of a domestic burglary, was either a domestic burglary in respect of which he was convicted in England and Wales or an offence constituted by a civil offence which is a domestic burglary,

and one of those other offences was committed after he had been convicted of the other (and, in the case of domestic burglaries, both of them before 30 November 1999), the court-martial must sentence him to a term of at least seven years' imprisonment, in the case of drug trafficking, or three years' imprisonment, in the case of burglaries, unless it is of the opinion that there are particular circumstances which relate to any of the offences or the offender and would make it unjust to do so in all the circumstances: Army Act 1955 s 70(3)(ac), (3D)-(3G), (7); Air Force Act 1955 s 70(3)(ac), (3D)-(3G), (7); Naval Discipline Act 1957 s 42(1)(ba), (1D)-(1G), (3) (all as so added). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, it is further provided that where a court-martial is of the opinion, as described above, that it would be unjust to impose the mandatory sentence, then provided it has taken into account the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty and the circumstances in which that indication was given, there is nothing to prevent it from imposing any sentence which is not less than 80% of the mandatory sentence (Army Act 1955 s 70A(1), (3); Air Force Act 1955 s 70A(1), (3); Naval Discipline Act 1957 s 42(1), (3) (all as so added)); and where the court-martial exercises its discretion to impose a lesser sentence, it must state in open court that it is of the required opinion, what the particular circumstances are, and that it has imposed the lesser sentence (Army Act 1955 ss 70A(2), 70B(2); Air Force Act 1955 ss 70A(2), 70B(2); Naval Discipline Act 1957 ss 42A(2), 42B(2) (all as so added)). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, it is further provided that for all relevant purposes of the provisions described above, where an offence is found to have been committed over a period of two or more days, or at some time during such a period, it is taken to have been committed on the last of those days: Army Act 1955 s 70(3H); Air Force Act 1955 s 70(3H); Naval Discipline Act 1957 s 42(1H) (all as so added). At the date at which this volume states the law no such day had been appointed.

15 As to the civil offence of treason see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 363 et seq.

16 The reference to murder applies also to aiding, abetting, counselling and procuring suicide: Army Act 1955 s 70(4) proviso; Air Force Act 1955 s 70(4) proviso; Naval Discipline Act 1957 s 48(2) proviso (all added by the Suicide Act 1961 s 2(3), Sch 1 Pt II). As to the civil offence of murder see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 89 et seq. As to complicity in suicide see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 106.

17 As to the civil offence of manslaughter see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 91 et seq.

18 As to treason felony see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 367.

19 As to rape see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 165 et seq.

20 Is an offence under the Geneva Conventions Act 1957 s 1 (as amended): see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 424. As to the Geneva Conventions generally see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 421 et seq.

21 Is an offence under the Biological Weapons Act 1974 s 1 (as amended) or the Chemical Weapons Act 1996 s 2 or s 11, as the case may be: see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) paras 468 et seq, 472 et seq.

22 Army Act 1955 s 70(4) (amended by the Biological Weapons Act 1974 s 5(1); the Chemical Weapons Act 1996 s 35(a); and the International Criminal Court Act 2001 s 74(2)); Air Force Act 1955 s 70(4) (amended by the Biological Weapons Act 1974 s 5(1); the Chemical Weapons Act 1996 s 35(b); and the International Criminal Court Act 2001 s 74(2)); Naval Discipline Act 1957 s 48(2) (amended by the Biological Weapons Act 1974 s 5(2); the Chemical Weapons Act 1996 s 35(c); and the International Criminal Court Act 2001 s 74(2)). The reference in the text to the legislation relating to genocide, crimes against humanity or war crimes is a reference to the International Criminal Court Act 2001 s 51 or s 52: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 454-455.

As from a day to be appointed, it is further provided that a person may not be tried under the Army Act 1955 s 70(1), the Air Force Act 1955 s 70(1) or the Naval Discipline Act 1957 s 42(1) (all as amended) (see the text and note 5 supra) for the offence of causing a nuclear explosion under the Nuclear Explosions (Prohibition and Inspection) Act 1998 s 1: Army Act 1955 s 70(4) (as so amended; prospectively further amended by the Nuclear Explosions (Prohibition and Inspection) Act 1998 s 12(a)); Air Force Act 1955 s 70(4) (as so amended; prospectively further amended by the Nuclear Explosions (Prohibition and Inspection) Act 1998 s 12(b)); Naval Discipline Act 1957 s 48(2) (as so amended; prospectively further amended by the Nuclear Explosions (Prohibition and Inspection) Act 1998 s 12(c)). At the date at which this volume states the law no such day had been appointed.

For these purposes, if the corresponding civil offence is murder or manslaughter, an offence under the Geneva Conventions Act 1957 s 1 (as amended), or an offence under the International Criminal Court Act 2001 s 51 consisting of the killing of a person, the offence under the relevant service discipline Act is deemed (for the purpose of determining whether it was committed in the United Kingdom) to have been committed where the act or omission causing the death occurred, irrespective of the place of the death: Army Act 1955 s 70(5); Air Force Act 1955 s 70(5); Naval Discipline Act 1957 s 48(2) (all amended by the International Criminal Court Act 2001 s 74(3)). A British ship on the high seas is not part of the United Kingdom, and consequently a person subject to one of the service discipline Acts can be tried by court-martial on a charge of murder committed on such a ship: *R v Gordon-Finlayson, ex p An Officer* [1941] 1 KB 171, DC. As to the United Kingdom see para 20 notes 1-2 ante.

Although a person alleged to have committed in the United Kingdom one of the offences to which this note refers cannot be charged and tried, either in the United Kingdom or elsewhere, under any of the service discipline Acts, there is no legal bar to a person alleged to have committed any of those offences outside the United Kingdom being charged and tried under the appropriate service discipline Act within the United Kingdom: eg murder allegedly committed in England cannot be charged or tried anywhere under the service discipline Acts, but the same offence allegedly committed anywhere in the world outside the United Kingdom can be charged and tried there by court-martial.

UPDATE

392-422 Offences triable under the Service Discipline Acts

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to offences under service law, see the Armed Forces Act 2006 Pt 1 (ss 1-49); and PARA 392 et seq. As to the evidential burden as respects excuses for offences under ss 1-41, see s 325.

422 Civil offences

TEXT AND NOTES--As to criminal conduct in relation to civil offences, see now the Armed Forces Act 2006 s 42 (criminal conduct), s 43 (attempting criminal conduct), s 44 (trial of s 42 offence of attempt), s 45 (conspiring to commit criminal conduct), s 46 (inciting criminal conduct), s 47 (aiding, abetting, counselling or procuring criminal conduct),

and s 48 (supplementary provision). If a person subject to service law, or a civilian subject to service discipline, does in or in relation to a military aircraft any act that if done in or in relation to a civil aircraft would amount to a prescribed Air Navigation Order offence, the act is to be treated for the purposes of the Armed Forces Act 2006 s 42(1) as punishable by the law of England and Wales: s 49(1). For the meaning of 'subject to service law' see PARA 306-313. 'Civilian subject to service discipline' means a person who is not subject to service law and is within Sch 15 Pt 1 (paras 1-10). See also Sch 15 Pt 2 (paras 11-13) (exclusions and definitions); and the Armed Forces (Civilians Subject to Service Discipline) Order 2009, SI 2009/836. For these purposes 'military aircraft' has the meaning given by the Civil Aviation Act 1982 s 92 (see AIR LAW vol 2 (2008) PARA 619); 'civil aircraft' means an aircraft that is registered in the United Kingdom and is not a military aircraft; 'Air Navigation Order offence' means an offence under an order in Council made under the Civil Aviation Act 1982 s 60 (see AIR LAW vol 2 (2008) PARA 353) (whenever made, and whether or not also made under any other enactment); and 'prescribed' means prescribed by an order made by the Secretary of State for these purposes: Armed forces Act 2006 s 49(4). As to the offences which have been prescribed for the purposes of s 49(1), (4), see the Armed Forces (Prescribed Air Navigation Order Offences) Order 2009, SI 2009/1094.

The Domestic Violence, Crime and Victims Act 2004 s 6(1), (2), (4) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 107 NOTE 9) has effect in relation to proceedings before the Court Martial with the reference to an offence of murder or manslaughter or an offence under s 5 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 107) being read as a reference to an offence under the Armed Forces Act 2006 s 42; and a reference to the court or jury being read as a reference to the court: Domestic Violence, Crime and Victims Act 2004 Act s 8 (amended by the Armed Forces Act 2006 Sch 16 para 238).

NOTE 9--Sexual Offenders Act 1997 repealed: Sexual Offences Act 2003 Sch 6 para 37, Sch 7.

Where a civil court is required to impose a minimum term for an offence, this term is an appropriate starting point for the court-martial, particularly where the court-martial is considering a custodial sentence: *R v Phillips*; *R v McEneaney* [2007] All ER (D) 324 (Jun), C-MAC.

NOTES 10, 13--Powers of Criminal Courts (Sentencing) Act 2000 s 109 repealed: Criminal Justice Act 2003 Sch 37 Pt 7.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/A. GENERAL PRINCIPLES/423. General sentencing principles before service courts.

(iii) Punishments and Orders under the Service Discipline Acts

A. GENERAL PRINCIPLES

423. General sentencing principles before service courts.

The sentences which a court-martial may impose are in many instances different from those available to the Crown Court¹. This distinction arises from the unique social conditions of service life and from the fact that an offence committed in a service context may have significantly graver repercussions for the efficiency and morale of the immediate service community within which it is committed than a corresponding civil offence might have for civilian society at large². Thus while the Crown Court will concern itself only with punishing criminality, a service court must, while in the specific context of the offence treating a service offender so far as possible in a similar way to a corresponding civilian offender³, additionally take into account disciplinary considerations and the impact of the criminality on the service community⁴. It may be seen therefore that the sentences handed down by service courts simultaneously punish the offender and maintain service discipline, and in some instances this may lead not only to an offence being punished more harshly than when committed in a civilian context, but also to certain sentences having disproportionate and unjust results⁵.

1 For the sentences which may be imposed by a court-martial, and as to their relative gravity, see para 424 et seq post; for the sentencing powers of the Crown Court see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 1 et seq.

2 See *R v Love* [1998] 1 Cr App Rep 458 at 462-463, C-MAC, per Simon Brown LJ (citing with approval examples relating to drug offences and theft in the Ministry of Defence internal publication *Sentencing in the Services' Justice Systems--A Short Guide* (December 1997)): 'The Services are a very close-knit community, particularly when abroad, and such a community is naturally susceptible to the growth of drug abuse, [which] strikes at the heart of the Services' discipline code of conduct and is detrimental to the effectiveness of a fighting force in addition to being especially dangerous in a Service environment ... dishonesty and theft from fellow service personnel clearly take on a more serious complexion, [since] in the Service environment people are accommodated and work very closely together, and because the opportunity to steal from one's comrades is always readily available there has to be a mutual feeling of trust. Theft from a colleague in the same barrack room or mess deck ... erodes that trust and is an aggravating feature'. Similar views were expressed by Hobhouse LJ in *R v Andrews* (23 February 1998, unreported), C-MAC ('the service community is not the same as the civilian community, and offences which may be at the margin of criminality in the civilian community may be far more serious when committed by servicemen and personnel in a service environment. They may in themselves be destructive of service discipline and impair the operation of the unit to which the soldier belongs ... Even petty pilferage may create unacceptable strains within the unit and impair its ability to operate properly and effectively'), and by Evans LJ in *R v McEnhill* (1999) Times, 4 February, C-MAC ('breach of discipline [is] an additional factor which the court must take into account. It could be regarded simply as an aggravating feature which is not present when the defendant is a civilian and the offence is not covered by the service background. That would make the likely sentence for a civilian the proper starting point and the appropriate sentence for a serviceman would inevitably be more severe').

3 See *R v Love* [1998] 1 Cr App Rep 458 at 462, C-MAC, per Simon-Brown LJ (citing with approval *Sentencing in the Services' Justice Systems--A Short Guide* (December 1997) para 4).

4 'Whilst a court-martial has, like any criminal court, a duty to consider the general public interest, it must also act in the interests of the Service and for the maintenance of discipline within it [and] for this reason, there are certain areas where a court-martial may impose a heavier sentence for a civil offence': *R v Love* [1998] 1 Cr App Rep 458 at 462, C-MAC per Simon-Brown LJ (citing with approval *Sentencing in the Services' Justice*

Systems--A Short Guide (December 1997) para 4). The court suggested for example that an offence of rape would be more serious if the offender took advantage of his superior rank or position.

Another factor legitimately to be taken into consideration is the impact of an offence on relations between the Service and a host nation: see *R v Rees* [2003] All ER (D) 66 (Jul), C-MAC.

5 The principal injustices appear to arise where persons with long service records are imprisoned for comparatively minor offences and, because imprisonment carries with it automatic reduction to the ranks and dismissal (see para 425 post) and the concomitant loss of such benefits as accrued pension rights, terminal grant and other benefits, also suffer enormous pecuniary loss hugely out of proportion to the gravity of the offence for which they were sentenced or to any fine to which they may alternatively have been made liable, and it is accordingly essential that the court understands these potential consequences before passing sentence: see *R v McEnhill* (1999) Times, 4 February, C-MAC; *R v Cooney* [1999] 3 All ER 173, [1999] 2 Cr App Rep 428, C-MAC.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

423 General sentencing principles before service courts [and summary hearings]

TEXT AND NOTES--A court or officer dealing with an offender for a service offence must have regard to the following purposes of sentencing:

- 1 (1) the punishment of offenders;
- 2 (2) the maintenance of discipline;
- 3 (3) the reduction of service offences and other crime (including reduction by deterrence);
- 4 (4) the reform and rehabilitation of offenders;
- 5 (5) the protection of the public;
- 6 (6) the making of reparation by offenders to persons affected by their offences: Armed Forces Act 2006 s 237(1).

As to the meaning of 'service offence' see PARA 451. If the offender is aged under 18 the court or officer must also have regard to his welfare: s 237(2). Section 237 does not apply in relation to (a) an offence the sentence for which is fixed by law; (b) an offence the sentence for which, as a result of any of ss 219(2), 221(2), 225(2), 226(2) and 227(2) (required custodial sentences) (see PARAS 424C, 432), falls to be imposed under (i) the Criminal Justice Act 2003 s 225(2) or 226(2) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 73-74, 80 et seq); (ii) the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) or 111(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 772); or (iii) the Firearms Act 1968 s 51A(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 662, 664); Armed Forces Act 2006 s 237(3) (amended by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 19). For these purposes 'sentencing' includes the making of any order when dealing with an offender in respect of his offence: Armed Forces Act 2006 s 237(4).

A court or officer dealing with an offender for a service offence ('the current offence') must in considering the seriousness of the offence (A) consider the offender's

culpability in committing the offence and any harm which the offence caused, was intended to cause or could foreseeably have caused; (b) if the offender has one or more previous convictions, treat as an aggravating factor each previous conviction that the court or officer considers can reasonably be so treated; (c) if the offender committed the current offence while charged with another service offence and released from service custody, or on bail, treat the fact that it was committed in those circumstances as an aggravating factor: Armed Forces Act 2006 s 238(1). In considering whether a previous conviction can reasonably be treated as an aggravating factor the court or officer must have regard, in particular, to the nature of the offence to which the conviction relates and its relevance to the current offence, and the time that has elapsed since the conviction: s 238(2). Any reference in s 238(1) or (2) to a previous conviction is to be read as a reference to a previous conviction of a service offence, or a previous conviction by a court in the British Islands of an offence other than a service offence: s 238(3). Nothing in s 238 prevents the court or officer from treating a previous conviction by a court outside the British Islands as an aggravating factor in any case where the court or officer considers it appropriate to do so: s 238(4).

The following provisions apply where an offender has pleaded guilty to a service offence in proceedings before a court, or at a summary hearing in respect of a service offence, has admitted the offence: Armed Forces Act 2006 s 239(1). In determining what sentence to pass on the offender, the court or officer dealing with him for his offence must take into account the stage in the proceedings for the offence at which he indicated his intention to plead guilty or his intention to admit the offence at a summary hearing, and the circumstances in which this indication was given: s 239(2). In s 239(2) 'sentence' includes any order made when dealing with the offender in respect of his offence: s 239(3). Section 239(5) below applies in the case of an offence the sentence for which, as a result of s 225(2) or 226(2) (see PARA 424C), falls to be imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) or 111(2): Armed Forces Act 2006 s 239(4). Nothing in the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) or 111(2) prevents the court, after taking into account any matter mentioned in the Armed Forces Act 2006 s 239(2), from imposing any sentence which is at least 80 per cent of that specified in the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) or 111(2): Armed Forces Act 2006 s 239(5).

The following provisions apply where a court or officer dealing with an offender for a service offence (other than an offence mentioned in s 240(3) below) is considering the seriousness of the offence: Armed Forces Act 2006 s 240(1). If the offence was racially or religiously aggravated the court or officer must treat that fact as an aggravating factor, and must state in open court that the offence was so aggravated: s 240(2). Section 240 does not apply in relation to an offence under s 42 (see PARA 422) as respects which the corresponding offence under the law of England and Wales is an offence under any of the Crime and Disorder Act 1998 ss 29-32 (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 155, 156): Armed Forces Act 2006 s 240(3). The Crime and Disorder Act 1998 s 28 (meaning of 'racially or religiously aggravated') (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 154) applies for the purposes of the Armed Forces Act 2006 s 240 as it applies for the purposes of the Crime and Disorder Act 1998 ss 29-32: Armed Forces Act 2006 s 240(4).

The following provisions apply where a court or officer dealing with an offender for a service offence within s 241(2) below is considering the seriousness of the offence: Armed Forces Act 2006 s 241(1). A service offence is within s 241(2) if (A) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on the sexual

orientation (or presumed sexual orientation) of the victim, or a disability (or presumed disability) of the victim; or (B) the offence is motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation, or by hostility towards persons who have a disability or a particular disability: s 241(2). The court or officer must treat as an aggravating factor the fact that the offence was committed in any of the circumstances mentioned in heads (A) or (B), and must state in open court that the offence was committed in such circumstances: s 241(3). It is immaterial for the purposes of heads (A) or (B) whether the offender's hostility is also based to any extent on any other factor not mentioned in those heads: s 241(4). For these purposes 'disability' means any physical or mental impairment: s 241(5).

As to sentencing principles governing particular punishments, see PARAS 423A, 423B. As to the duty to give reasons and explain any sentence to the offender, see Armed Forces Act 2006 ss 252, 253.

Nothing in Pt 9 (ss 237-271) affects a civilian court dealing with an offender for a service offence: Armed Forces Act 2006 s 271(1). The Secretary of State may by regulations modify any provision of the Criminal Justice Act 2003 Act Pt 12 Ch 1 (sentencing principles etc for civilian courts), or any other enactment that confers functions on sentencing courts, in its application to a civilian court dealing with an offender for a service offence: Armed Forces Act 2006 s 271(2). As to such regulations, see the Armed Forces (Civilian Courts Dealing with Service Offences) (Modification of the Criminal Justice Act 2003) Regulations 2009, SI 2009/2042.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/A. GENERAL PRINCIPLES/423A. Specific punishments: sentencing principles applying to service courts and summary hearings.

423A. Specific punishments: sentencing principles applying to service courts and summary hearings.

1. Service detention and custodial sentences

A court may not pass a sentence of service detention in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence: Armed Forces Act 2006 s 242(1). In forming any such opinion as is mentioned in s 242(1) or 243(2) below, a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors: s 242(2). In s 242(1), (2) 'court' does not include the Summary Appeal Court: s 242(3). A sentence of service detention may not be passed by an officer at a summary hearing, or passed or confirmed by the Summary Appeal Court, unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence: s 242(4). In forming any such opinion as is mentioned in s 242(4) or s 243(3) below, an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors: s 242(5).

The following provisions apply where a sentence of service detention is passed in respect of a service offence: s 243(1). Where the detention is imposed by a court other than the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it: s 243(2). Where the detention is imposed by an officer at a summary hearing or by the Summary Appeal Court, it must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the officer or court is commensurate with the seriousness of the offence (or, if it is imposed in respect of two or more offences, the seriousness of them taken together): s 243(3). Nothing in ss 242, 243 affect a court or commanding officer's power to mitigate a sentence by taking account of anything that the court or commanding officer thinks relevant: see s 254.

A court or officer may not pass a sentence of service detention, make a direction under s 189 (consecutive terms of service detention) (see PARA 519A.10), or make an order under s 191 or 193 (activation of suspended sentence of service detention) (see PARA 519A.10), whose effect would be that a person would (at the relevant time) be subject to sentences of service detention the combined term of which exceeds two years: Armed Forces Act 2006 s 244(1). 'The relevant time' is the time immediately after the passing of the sentence or the making of the direction or order: s 244(2). For these purposes, the combined term of sentences of service detention is (1) if none of the sentences overlap, the aggregate of the terms of the sentences; (2) otherwise, the aggregate of the period (or periods) during which any of the sentences overlaps any other of them and the period (or periods) for which none of the sentences overlap: s 244(3). Where s 244(1) is contravened, any part of any sentence of service detention which would (apart from s 244(4)) have effect after the end of the permitted period is remitted by virtue of s 244(4): s 244(4). For these purposes 'permitted period' means the period beginning with the date of contravention and equal in length to the longest sentence of service detention that could have been passed on that date without contravening s 244(1): s 244(5). For the purposes of the reference in s 244(4) to a part of a sentence which would have effect after the

end of the permitted period, any prospect of early release is to be disregarded: s 244(6). In s 244(1) 'sentence of service detention' does not include a suspended sentence of service detention: s 244(7). Section 244(2)-(5) applies for the purposes of s 244: s 245(1). A person is to be regarded as not subject to any sentence from which he has been released early: Armed Forces Act 2006 s 245(2). A person is to be regarded as not subject to a suspended sentence of service detention unless an order that the sentence take effect has been made: s 245(3). Subject to s 245(3), a person is to be regarded as subject to any sentence of service detention that has been passed on him but has not taken effect, or as a result of s 290(5) or (6), or s 291(6) or (7), has ceased to have effect and has not resumed effect: s 245(4). A person who has been detained continuously pursuant to two or more sentences of service detention is to be regarded as subject to all of those sentences (whether or not any of them has been served in full): s 245(5). For the purposes of s 245(5), any periods of detention which would be continuous but for s 290(3), (5) or (6) or s 291(5), (6) or (7) are to be treated as continuous: s 245(6).

Where a term of imprisonment for a fixed term or a sentence of service detention is passed on an offender who has been kept in service custody for any period since he was charged, the court or the commanding officer must direct that time spent in custody by the offender in connection with the offence in question or any related offence is to count towards the sentence, unless the court or commanding officer thinks it just not to do so; this requirement may be relaxed by rules made by the Secretary of State in certain circumstances: see Armed Forces Act 2006 s 246. Section 246 applies not only where the offender has been kept in service custody when charged with the offence for which he is being sentenced, but also where he has been kept in service custody in connection with a different charge based on the same facts or evidence: see s 247.

2. Forfeiture of seniority and reduction in rank

A court may not pass a sentence of forfeiture of seniority, reduction in rank or disrating in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence: Armed Forces Act 2006 s 248(1). In forming any such opinion as is mentioned in s 248(1), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors: s 248(2). In s 248(1), (2) 'court' does not include the Summary Appeal Court: s 248(3). A sentence of forfeiture of seniority, reduction in rank or disrating may not be passed by an officer at a summary hearing, or passed or confirmed by the Summary Appeal Court, unless the officer or court is of the opinion that the offence it is in respect of (or, if it is in respect of two or more offences, the combination of them) was serious enough to warrant such a sentence: s 248(4). In forming any such opinion as is mentioned in s 248(4), an officer or the Summary Appeal Court must take into account all such information as is available to him or it about the circumstances of the offence (or offences), including any aggravating or mitigating factors: s 248(5). Nothing in s 248 affects a court or commanding officer's power to mitigate a sentence by taking account of anything that the court or commanding officer thinks relevant: see s 254.

3. Financial punishments

A court or officer fixing a fine to be imposed on an offender in respect of a service offence must, before fixing the amount of the fine, inquire into the offender's financial circumstances: Armed Forces Act 2006 s 249(1). The amount of any fine fixed by a court or officer in respect of a service offence must be such as, in the opinion of the court or officer, reflects the seriousness of the offence: s 249(2). In fixing the amount of any fine to be imposed on an offender in respect of a service offence, a court or officer must take into account the circumstances of the

case including, among other things, the offender's financial circumstances so far as they are known, or appear, to the court or officer: s 249(3). Section 249(3) applies whether taking into account the offender's financial circumstances has the effect of increasing or reducing the amount of the fine: s 249(4). Where (1) the court has inquired into the offender's financial circumstances as required by this provision; (2) the offender has failed to co-operate with the court in its inquiry (whether by failing to comply with a financial statement order under s 266 (see PARA 423B.4) or otherwise); and (3) the court considers that it has insufficient information to make a proper determination of the offender's financial circumstances, the court may make such determination of his financial circumstances as it considers appropriate: s 249(5). References in s 249(5) to 'the court' are to the court or officer fixing a fine in respect of a service offence: s 249(6).

In determining whether to make a service compensation order (see PARA 424A.2) against any person, and in determining the amount to be paid by any person under such an order, a court or officer must have regard to that person's financial circumstances so far as they appear or are known to the court or officer: Armed Forces Act 2006 s 250(1). Where the court or officer considers (a) that it would be appropriate both to impose a fine and to make a service compensation order, but; (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation, the court or officer must give preference to compensation (but may impose a fine as well): s 250(2). Nothing in ss 249, 250 affect a court or commanding officer's power to mitigate a sentence by taking account of anything that the court or commanding officer thinks relevant: see s 254.

A court or officer awarding a fine or service compensation order in respect of a service offence may make an order allowing time for payment of the amount due in respect of the fine or service compensation order ('the amount due'), or directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order: Armed Forces Act 2006 s 251(1), (2). If no order under s 251 is made when the fine or service compensation order is imposed, at any later time the appropriate court may make such an order on the application of the person by whom the amount due is payable ('the relevant person'): s 251(3). The appropriate court may on the application of the relevant person vary an order made under this provision: s 251(4). For these purposes 'the appropriate court' means (i) if the fine or service compensation order was imposed by an officer and s 251(6) below applies, the commanding officer of the relevant person; (ii) if the fine or service compensation order was imposed by a court and s 251(6) or (7) applies, the Court Martial: s 251(5). Section 251(6) applies if the relevant person is for the time being subject to service law, a member of a volunteer reserve force, or a member of an ex-regular reserve force who is subject to an additional duties commitment: s 251(6). For the meaning of 'subject to service law' see PARA 303-313. Section 251(7) applies if the relevant person is for the time being a civilian subject to service discipline: s 251(7). 'Civilian subject to service discipline' means a person who is not subject to service law and is within Sch 15 Pt 1 (paras 1-10). See also Sch 15 Pt 2 (paras 11-13) (exclusions and definitions).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

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423B. Specific punishments: sentencing principles applying to service courts only.

1. General

Where the Court Martial or the Service Civilian Court (see PARA 520) convicts a person, the court must pass a separate sentence in respect of each offence of which he is convicted: Armed Forces Act 2006 s 255.

A service court must obtain and consider a pre-sentence report when considering whether to pass a discretionary custodial sentence, a sentence of dismissal, dismissal with disgrace or service detention, or a community punishment: see s 256. A 'pre-sentence report' has the meaning given by the Criminal Justice Act 2003 s 158(1) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 626) but reports may be prepared for service courts by social workers as well as probation officers: see Armed Forces Act 2006 s 257. Before passing a custodial sentence, other than one fixed by law, on an offender who is, or appears to be, mentally disordered, a service court must obtain and consider a medical report unless it considers that no such report is needed: see s 258. Nothing in ss 256, 258 affects a court's power to mitigate a sentence by taking account of anything that the court thinks relevant: see s 254.

A court must (1) in sentencing an offender for a service offence, have regard to any guidelines that are relevant to the offender's case; and (2) in exercising any other function relating to the sentencing of offenders for service offences, have regard to any guidelines which are relevant to the exercise of the function: Armed Forces Act 2006 s 259(1). However, the court may depart from the guidelines mentioned in heads (1) or (2) if in its opinion the departure is justified by any features of service life or of the service disciplinary system that are relevant to the case: s 259(2). Section 259(2) does not limit any power existing apart from that provision to depart from guidelines: s 259(3). References in heads (1) and (2) to sentencing an offender for a service offence include making any order when dealing with an offender in respect of such an offence: s 259(4). For these purposes 'guidelines' means sentencing guidelines issued by the Sentencing Guidelines Council under the Criminal Justice Act 2003 s 170(9) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 635 et seq) as definitive guidelines, as revised by subsequent guidelines so issued; and 'sentencing guidelines' has the meaning given by s 170(1): Armed Forces Act 2006 s 259(5).

2. Custodial sentences and service detention

Where a court is dealing with an offender for a service offence punishable with a custodial sentence, other than an offence the sentence for which is fixed by law, or required under the Armed Forces Act 2006 Pt 8 Ch 6 (ss 217-228) (see PARAS 424C, 432), a court may not pass a custodial sentence unless it thinks the offence, or the combination of the offence and any associated offences, was so serious that no less severe sentence can be justified; the court can also pass a custodial sentence if it would have awarded a community punishment but cannot impose a particular requirement because the offender will not agree to it: see Armed Forces Act 2006 s 260 (amended by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 21).

Where a service court passes a custodial sentence (other than one fixed by law, or one imposed under the Criminal Justice Act 2003 s 225 or 226 (see SENTENCING AND DISPOSITION OF

OFFENDERS vol 92 (2010) PARAS 73-74, 80 et seq) (as applied by the Armed Forces Act 2006 s 219(2) or 221(2) (see PARAS 424C, 432)), the sentence must be for the shortest term commensurate with the seriousness of the offence, or the combination of the offence and any associated offences, unless Pt 8 Ch 6 requires a longer term: see Armed Forces Act 2006 s 261 (amended by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 22). Nothing in ss 260, 261 affects a court's power to mitigate a sentence by taking account of anything that the court thinks relevant: see Armed Forces Act 2006 s 254.

A service court may recommend licence conditions when passing a sentence of imprisonment for 12 months or more: see the Armed Forces Act 2006 s 262 (which applies the Criminal Justice Act 2003 s 238(1) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 25) to courts dealing with service offences).

A service court must not pass a sentence of imprisonment, a sentence of detention under the Armed Forces Act 2006 s 209 or 218 (see PARAS 431, 432), a detention and training order or a sentence of service detention on an offender who is not legally represented in that court; but this does not apply if the offender refused or failed to apply for representation after being informed of his right to apply for it, or was aged 21 or more when convicted and has previously been sentenced to imprisonment: see Armed Forces Act 2006 s 263(1)-(3). For these purposes a previous sentence of imprisonment which has been suspended and has not taken effect is to be disregarded; and 'sentence of imprisonment' does not include a committal for contempt of court or any kindred offence: s 263(6). An offender is 'legally represented' for these purposes in the Court Martial or the Service Civilian Court only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced: s 263(4). An offender is 'legally represented' in the Summary Appeal Court (1) in a case where his appeal was only against punishment, if he has the assistance of counsel or a solicitor to represent him at some time during the proceedings in that court; (2) in any other case, only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after the court confirms or substitutes the finding and before it confirms or passes sentence: s 263(5).

Where a provision of the Armed Forces Act 2006 requires a court to impose a particular custodial sentence in respect of an offence, it is not to be taken to prevent the court from including in its sentence for that offence any other authorised punishment: s 264(1). An 'authorised punishment' means any punishment authorised by the Armed Forces Act 2006 apart from service detention, a service supervision and punishment order, minor punishments, a community punishment, a conditional or absolute discharge: s 264(2).

3. Dismissal

A court may not pass a sentence of dismissal or dismissal with disgrace in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence: Armed Forces Act 2006 s 265(1). In forming any such opinion, a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors: s 265(2). The Court Martial must not pass a sentence of dismissal or dismissal with disgrace on an offender who is not legally represented in that court: s 265(3). This does not apply if the offender, having been informed of his right to apply for legal representation and having had the opportunity to do so, refused or failed to apply: s 265(4). For these purposes an offender is 'legally represented' in the Court Martial only if he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced: s 265(5). Nothing in s 265 affects a court's power to mitigate a sentence by taking account of anything that the court thinks relevant: see Armed Forces Act 2006 s 254.

4. Financial punishments

Before sentencing a person who has been convicted of a service offence, a court may make a financial statement order; but this does not apply to the Summary Appeal Court: Armed Forces Act 2006 s 266(1). A financial statement order is an order requiring the person to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require: s 266(2). A person who without reasonable excuse fails to comply with a financial statement order commits an offence and is liable to a fine not exceeding level 3 on the standard scale: s 266(3). A person who in providing any statement in pursuance of a financial statement order makes a statement which he knows to be false in a material particular, recklessly provides a statement which is false in a material particular, or knowingly fails to disclose any material fact, commits an offence and is liable to a fine not exceeding level 4 on the standard scale: s 266(4). For the meaning of 'service offence' see PARA 451. As to the evidential burden as respects excuses for offences under s 266, see s 325.

Where a court has, in fixing the amount of a fine in respect of a service offence, determined the offender's financial circumstances under s 249(5) (see PARA 423A.3), if, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would have fixed a smaller amount, or not have fined him, it may remit the whole or part of the fine: s 267.

Where an offender was convicted aged under 18, is a civilian subject to service discipline, and has a parent or guardian who is subject to service law or who is a civilian subject to service discipline, the court may order that parent or guardian to pay any fine or compensation awarded against the offender; and must do so where the offender is aged under 16: see s 268. As to the meaning of 'subject to service law' see PARA 303-313. 'Civilian subject to service discipline' means a person who is not subject to service law and is within Sch 15 Pt 1 (paras 1-10). See also Sch 15 Pt 2 (paras 11-13) (exclusions and definitions). As to the fixing of the fine or compensation to be paid by a parent or guardian under s 268, see Armed Forces Act 2006 s 269.

5. Community punishments

A court must not award a community punishment in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a punishment: Armed Forces Act 2006 s 270(1). 'Community punishment' means a service community order (see PARA 424A.3) or an overseas community order (see PARA 424A.4): s 374. Where a court awards a community punishment (1) the particular requirement (or requirements) included in the order must be such as the court considers the most suitable for the offender; and (2) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it: s 270(2). In forming any such opinion as is mentioned in s 270(1) or (2)(b) (see head (2)), a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors: s 270(3). In forming an opinion for the purposes of s 270(2)(a) (see head (1)) the court may take into account any information about the offender which is before it: s 270(4). In determining the restrictions on liberty to be imposed by a community punishment in respect of an offence, the court may have regard to any period for which the offender has, since being charged with the offence or any related offence, been kept in service custody in connection with the offence or any related offence; and 'related offence' has the meaning given by s 247 (see PARA 423A.1): s 270(5), (6). The fact that by virtue of any provision of s 270 a community punishment may be awarded in respect of an offence, or particular restrictions on liberty may be imposed by a community punishment, does not require a court to award such a punishment

or to impose those restrictions: s 270(6A) (s 270(6A) added by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 26(1), (2)). As to the application of the Criminal Justice Act 2003 s 151 (community order for persistent offender previously fined) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 170) to a court dealing with a service offence, see the Armed Forces Act 2006 s 270(7). Section 270(1), (2)(b) are subject to the Criminal Justice Act 2003 s 151(2) as applied by the Armed Forces Act 2006 s 270: s 270(8). Nothing in s 270 affects a court's power to mitigate a sentence by taking account of anything that the court thinks relevant: see Armed Forces Act 2006 s 254.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

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B. PUNISHMENTS APPLICABLE TO SERVICE PERSONNEL

424. Scale of punishments of general application to servicemen and servicewomen.

Subject to the special provisions applicable to the treatment of civilians¹ and juveniles², the punishments³ which may be awarded by sentence⁴ of a court-martial are:

- 394 (1) imprisonment⁵;
- 395 (2) an order that the convicted person be disqualified from working with children⁶;
- 396 (3) dismissal with disgrace from Her Majesty's service⁷;
- 397 (4) dismissal from Her Majesty's service⁸;
- 398 (5) detention for a term not exceeding two years⁹;
- 399 (6) forfeiture of seniority for a specified term or otherwise¹⁰;
- 400 (7) dismissal of a person subject to naval discipline from the ship or naval establishment to which he belongs¹¹;
- 401 (8) reduction of a person subject to military or air force law to the ranks, or any less reduction in rank¹², or disrating of a person subject to naval discipline¹³;
- 402 (9) a fine¹⁴;
- 403 (10) a severe reprimand¹⁵;
- 404 (11) a reprimand¹⁶;
- 405 (12) where the offence has occasioned any expense, loss, damage or personal injury, stoppages¹⁷; and
- 406 (13) such minor punishments as may be authorised by the Defence Council from time to time¹⁸.

References in the service discipline Acts¹⁹ to any punishment provided (or, in the case of naval discipline, authorised) are, subject to the limitation imposed in any particular case by the addition of the word 'less', references to any one or more of these punishments²⁰, each of which must be treated as less than any punishment which precedes it in the list and greater than any which follows it²¹. For these purposes it is necessary to have regard to the actual effect of the sentence; for instance a sentence of six months' detention, whilst lower in the list than one of six months' imprisonment, would have the effect of depriving the accused of his liberty for four months rather than three²².

1 See para 430 post.

2 See para 431 post.

3 In addition to the punishments specified in this paragraph which may be awarded by a court-martial, an offender is liable in certain circumstances to forfeit decorations by administrative action as opposed to by order of the court or medals (as to which see the Queen's Regulations for the Royal Navy (Consolidated Edn, 1997) Ch 74 para J.7423; the Manual of Naval Law vol I Ch 1 art 0943, vol II Ch 25 arts 2542-2544; the Queen's Regulations for the Army 1975 Ch 5 paras 5.398-5.400D, Ch 10 para J10.019, Annex B, C; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 7 para J262, App 28A-28E.

4 Sentences may be postponed, and sentences of imprisonment may be suspended: see para 477 post.

5 Army Act 1955 s 71(1)(b) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Army Act 1955 s 71(1)(b) amended by the Armed Forces Act 1976 s 10(3)(b)); Air Force Act 1955 s 71(1)(b) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Air Force Act 1955 s 71(1)(b) amended by the Armed Forces Act 1976 s 10(3)(b)); Naval Discipline Act 1957 s 43(1)(b) (s 43 substituted by the Armed Forces Act 1971 s 38; and the Naval Discipline Act 1957 s 43(1)(b) amended by the Armed Forces Act 1976 s 10(3)(d)). As to imprisonment see further para 425 post. As to juvenile offenders see para 431 post.

6 Army Act 1955 s 71(1)(bc) (s 71 as substituted (see note 5 supra); s 71(1)(bc) added by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II para 14); Air Force Act 1955 s 71(1)(bc) (s 71 as substituted (see note 5 supra); s 71(1)(bc) added by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II para 21); Naval Discipline Act 1957 s 43(1)(bc) (s 43 as substituted (see note 5 supra); s 43(1)(bc) added by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II para 28). As to the conditions which must be satisfied before a court may order that a person be disqualified from working with children, and as to the making and administration of disqualification orders generally, see the Criminal Justice and Court Services Act 2000 Pt II (ss 26-42); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 663 et seq (see in particular, in connection with armed forces offenders, s 27; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 668).

7 Army Act 1955 s 71(1)(c); Air Force Act 1955 s 71(1)(c); Naval Discipline Act 1957 s 43(1)(c) (all as substituted: see note 5 supra). As to dismissal see further para 426 post.

8 Army Act 1955 s 71(1)(d); Air Force Act 1955 s 71(1)(d); Naval Discipline Act 1957 s 43(1)(d) (all as substituted: see note 5 supra). As to dismissal see further para 426 post.

9 Army Act 1955 s 71(1)(e); Air Force Act 1955 s 71(1)(e); Naval Discipline Act 1957 s 43(1)(e) (all as substituted: see note 5 supra). As to detention see further para 427 post.

10 Army Act 1955 s 71(1)(f); Air Force Act 1955 s 71(1)(f); Naval Discipline Act 1957 s 43(1)(f) (all as substituted: see note 5 supra). A sentence of forfeiture of seniority may not be awarded to a warrant officer, non-commissioned officer, soldier, airman, or rating below the rate of warrant officer: Army Act 1955 s 71(2)(b)-(d); Air Force Act 1955 s 71(2)(b)-(d); Naval Discipline Act 1957 s 43(2)(b), (c) (all as so substituted). As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante. Before awarding a sentence of loss of seniority the court should consider the financial implications for the defendant: see *R v McEnhill* (1999) Times, 4 February, C-MAC.

11 Naval Discipline Act 1957 s 43(1)(g) (as substituted: see note 5 supra). As to the categories of persons subject to naval discipline see paras 306, 309 et seq ante. A sentence of dismissal from a ship or naval establishment may not be awarded to a warrant officer or to a rating below the rate of warrant officer: Naval Discipline Act 1957 s 43(2)(b), (c) (as so substituted).

12 Army Act 1955 s 71(1)(g); Air Force Act 1955 s 71(1)(g) (both as substituted: see note 5 supra). As to the categories of persons subject to military or air force law see para 307 et seq ante. For these purposes, a member of Her Majesty's military or air forces who is attached to Her Majesty's naval forces under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended) is regarded as subject to military or air force law and is accordingly liable to be sentenced to reduction in rank and not to disrating: Naval Discipline Act 1957 s 113, Sch 2 para 3 (substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(7)). As to reduction to the ranks see further para 428 post.

13 Naval Discipline Act 1957 s 43(1)(h) (as substituted: see note 5 supra). As to eligibility for disrating see further note 12 supra; and as to disrating generally see para 428 post.

14 Army Act 1955 s 71(1)(h); Air Force Act 1955 s 71(1)(h); Naval Discipline Act 1957 s 43(1)(i) (all as substituted: see note 5 supra). As to fines see further para 429 post.

15 Army Act 1955 s 71(1)(i); Air Force Act 1955 s 71(1)(i); Naval Discipline Act 1957 s 43(1)(j) (all as substituted: see note 5 supra). The punishment of reprimand or severe reprimand may not be awarded to a soldier, airman, or rating below the rate of leading seaman: Army Act 1955 s 71(2)(d); Air Force Act 1955 s 71(2)(d); Naval Discipline Act 1957 s 43(2)(c) (all as so substituted).

16 Army Act 1955 s 71(1)(j); Air Force Act 1955 s 71(1)(j); Naval Discipline Act 1957 s 43(1)(k) (all as substituted: see note 5 supra). See further note 15 supra.

17 Army Act 1955 s 71(1)(k) (as substituted (see note 5 supra); and s 71(1)(k) amended by the Armed Forces Act 1991 s 7(1)(a)); Air Force Act 1955 s 71(1)(k) (as substituted (see note 5 supra); and s 71(1)(k) amended by the Armed Forces Act 1991 s 7(1)(a)); Naval Discipline Act 1957 s 43(1)(l) (as substituted (see note 5 supra); and s 43(1)(l) amended by the Armed Forces Act 1991 s 8(1)(a)). 'Stoppages' means the recovery, by deductions from the offender's pay, of a specified sum by way of compensation (which, in the case of a person subject to naval discipline, is expressed to be compensation for any expense, personal injury, loss or damage):

Army Act 1955 s 225(1) (amended by the Armed Forces Act 1991 ss 7(2), 26(2), Sch 3); Air Force Act 1955 s 223(1) (amended by the Armed Forces Act 1991 s 7(2), Sch 3); Naval Discipline Act 1957 s 43(1)(l) (as so substituted and amended). The provisions relating to stoppages do not in general apply to officers of any reserve of officers or to members of the army and air force reserve and auxiliary forces except at certain times: see the Army Act 1955 s 211(4), (4A) (as substituted); the Air Force Act 1955 s 210(4), (4A) (as substituted); and para 247 ante.

Stoppages awarded for personal injury for which a person is convicted, or any other such offence taken into consideration in determining sentence, is limited to a sum not exceeding £5,000: Army Act 1955 s 71(6) (as substituted (see note 5 supra); and s 71(6), (7) added by the Armed Forces Act 1991 s 7(1)(b)); Air Force Act 1955 s 71(6) (as substituted (see note 5 supra); and s 71(6), (7) added by the Armed Forces Act 1991 s 7(1)(b)); Naval Discipline Act 1957 s 43(7) (as substituted (see note 5 supra); and s 43(7), (8) added by the Armed Forces Act 1991 s 8(1)(b)); Armed Forces (Compensation Limits) Order 1996, SI 1996/1420, art 2. This is the case unless the Secretary of State by order provides that this provision no longer applies: Army Act 1955 s 71(6) (s 71 as so substituted; s 71(6) as so added); Air Force Act 1955 s 71(6) (s 71 as so substituted; s 71(6) as so added); Naval Discipline Act 1957 s 43(7) (s 43 as so substituted; s 43(7) as so added). The power to make an order under these provisions is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 s 71(7) (s 71 as so substituted; s 71(7) as so added); Air Force Act 1955 s 71(7) (s 71 as so substituted; s 71(7) as so added); Naval Discipline Act 1957 s 43(8) (s 43 as so substituted; s 43(8) as so added).

Where the offence charged is one which may render an accused who is subject to military or air force law liable to the punishment of stoppages, the charge must state any additional facts which it is intended to prove as rendering the accused liable to that punishment if convicted: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 para 8; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 para 8.

18 Army Act 1955 s 71(1)(l); Air Force Act 1955 s 71(1)(l); Naval Discipline Act 1957 s 43(1)(m) (all as substituted: see note 5 supra). Minor punishments may not be awarded to officers or warrant officers: Army Act 1955 s 71(2)(a), (b); Air Force Act 1955 s 71(2)(a), (b); Naval Discipline Act 1957 s 43(2)(a), (b) (all as so substituted). As to the Defence Council see para 2 ante.

19 As to the service discipline Acts see para 302 ante.

20 Army Act 1955 s 71(1); Air Force Act 1955 s 71(1); Naval Discipline Act 1957 s 43(1) (all as substituted: see note 5 supra).

21 Army Act 1955 s 71(1) first proviso; Air Force Act 1955 s 71(1) first proviso; Naval Discipline Act 1957 s 43(1) first proviso (all as substituted: see note 5 supra). This is subject to the proviso that a punishment of detention for a term not exceeding two years may not be treated as a less punishment than imprisonment (or, in the case of a young offender, detention by virtue of a custodial order (see para 431 post)) if the term of detention is longer than the term of imprisonment or, as the case may be, detention by virtue of the custodial order: Army Act 1955 s 71(1) second proviso (s 71 as so substituted; and s 71(1) second proviso added by the Armed Forces Act 1986 s 16(1), Sch 1 para 4); Air Force Act 1955 s 71(1) second proviso (s 71 as so substituted; and s 71(1) second proviso added by the Armed Forces Act 1986 Sch 1 para 4); Naval Discipline Act 1957 s 43(1) second proviso (s 43 as so substituted; and s 43 second proviso added by the Armed Forces Act 1986 Sch 1 para 4).

22 As to detention see para 427 post.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

424 Scale of punishments of general application to servicemen and servicewomen

TEXT AND NOTES--Replaced. The following punishments may be awarded by the Court Martial under the Armed Forces Act 2006:

- 7 (1) imprisonment (see PARA 424C as to mandatory sentences);
- 8 (2) dismissal with disgrace from Her Majesty's service;
- 9 (3) dismissal from Her Majesty's service;
- 10 (4) detention for a term not exceeding two years (not if the person being sentenced is an officer);
- 11 (5) forfeiture of a specified term of seniority or of all seniority (only if the person being sentenced is an officer) (see PARA 423A.2 as to sentencing principles relating to forfeiture of seniority);
- 12 (6) reduction in rank, or disrating (only if the person being sentenced is a warrant officer or non-commissioned officer, and not to an extent prohibited by regulations (see the Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009, SI 2009/1215, reg 8)) (see PARA 423A.2 as to sentencing principles relating to reduction in rank);
- 13 (7) a fine;
- 14 (8) a service community order (only if the person being sentenced is on the same occasion sentenced to dismissal or dismissal with disgrace, and only if the offender is aged 18 or over when convicted, and it appears to the court that he will reside in the United Kingdom when the order is in force) (see PARA 424A.3);
- 15 (9) a severe reprimand or a reprimand (only if the person being sentenced is not an officer, warrant officer or non-commissioned officer);
- 16 (10) a service supervision and punishment order (only if the person being sentenced is an able rate, marine, soldier or airman) (see PARA 424A.1);
- 17 (11) such minor punishments as may from time to time be authorised by regulations made by the Defence Council (see SI 2009/1215 regs 1-7);
- 18 (12) a service compensation order (see PARA 424A.2): Armed Forces Act 2006 s 164(1), (5).

Where the Armed Forces Act 2006 provides that a person guilty of a particular offence is liable to any punishment mentioned in s 164(1), it means he is liable to any one or more of the punishments so mentioned (subject in the case of each one to any limitation shown): s 164(2). Section 164(1), (2) are subject to, in particular, s 165 (see below), Pt 8 Chs 4-6 (ss 196-228) (imprisonment for under 12 months, young offenders' custodial sentences, and mandatory etc sentences for serious offences), and Pt 9 (ss 237-271) (general provisions about sentencing) (see PARAS 423A, 423B): s 164(3). The Defence Council may by regulations restrict the extent to which persons of a description specified in the regulations may be reduced in rank or disrated (see SI 2009/1215): Armed Forces Act 2006 s 164(4). Where regulations under head (11) authorise a minor punishment, they may (a) confer on the Court Martial a power, when awarding the punishment, to direct that the punishment take effect from a date after the date of the award; (b) confer on the offender's commanding officer the function of deciding the details of the punishment; (c) provide for the delegation by the commanding officer of any of his functions under the regulations: s 164(6). As to modifications of Court Martial sentencing powers in relation to civilian offenders and ex-servicemen, see s 164(7), Sch 3.

Where the Court Martial tries a person as the result of his electing to be tried by that court instead of by his commanding officer, the Court Martial may only award a punishment up to the maximum punishment that the commanding officer could have awarded if he had dealt with the person summarily; and where the Court Martial convicts a person who elected trial by it of two or more offences, the punishments it

awards for both or all of them taken together must not exceed the maximum that the commanding officer could have awarded if he had heard them summarily: see s 165. See also the Armed Forces (Court Martial Rules) 2009, SI 2009/2041, r 158 (sentence where charge added to, or substituted for, election charge), r 159 (sentence where charge referred following election on another charge), r 160 (multiple relevant offences: application of s 165(4)), r 161 (sentence for multiple relevant offences).

As to the pardons of servicemen executed for disciplinary offences during the period beginning 4 August 1914 and ending 11 November 1918, see the Armed Forces Act 2006 s 359.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/B. PUNISHMENTS APPLICABLE TO SERVICE PERSONNEL/424A. Definition of certain sentences.

424A. Definition of certain sentences.

1. Service supervision and punishment orders

A service supervision and punishment order is an order that imposes on the offender, for a period specified in the order, such requirements as regulations made by the Defence Council may prescribe, and provides that one-sixth of his gross pay for that period is forfeit: Armed Forces Act 2006 s 173(1). The period specified in the order must be 90, 60 or 30 days beginning with the day the order is made: s 173(2). The requirements that regulations under this provision may prescribe include, in particular, requirements to perform activities of a prescribed description, and requirements not to use entitlement to leave; and the descriptions of activities that may be prescribed include extra work and drill: s 173(3). A requirement included in the regulations may be for a person to perform an activity of a prescribed description for up to a prescribed period of time per day, and the regulations may (1) confer on the person's commanding officer the function of deciding in respect of any day what activities within the prescribed description must be performed and for how much of the prescribed period of time and when; (2) provide for the delegation by the commanding officer of any of his functions under the regulations: s 173(4). The regulations may prescribe different requirements for different parts of the period of the order: s 173(5). For these purposes 'prescribed' means prescribed by regulations under s 173: s 173(6). As to the regulations so made, see the Armed Forces (Service Supervision and Punishment Orders) Regulations 2009, SI 2009/1214. As to the review of service supervision and punishment orders see Armed Forces Act 2006 s 174.

2. Service compensation orders

A service compensation order is an order that requires the offender to pay compensation for any personal injury, loss or damage resulting from the offence of which he has been convicted, or where any other offence is taken into consideration in determining his sentence, any offence so taken into consideration: Armed Forces Act 2006 s 175(1). A service compensation order must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor: s 175(2). In the case of an offence of unlawfully obtaining any property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for these purposes as having resulted from the offence, however and by whomever the damage was caused: s 175(3). No service compensation order may be made in respect of bereavement, funeral expenses, or loss of any other kind suffered by the dependants of a person in consequence of his death: s 175(4). No service compensation order may be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road unless (1) it is in respect of damage treated by s 175(3) as resulting from an offence of unlawfully obtaining any property; or (2) it is in respect of injury, loss or damage as respects which (a) the offender is uninsured in relation to the use of the vehicle; and (b) compensation is not payable under any arrangements to which the Secretary of State is a party: s 175(5). Where a service compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential

rates of insurance attributable to the accident: s 175(6). For the purposes of s 175(5) a person is not uninsured in relation to the use of a vehicle if the vehicle is in the public service of the Crown, or the use of the vehicle is exempted from insurance by the Road Traffic Act 1988 s 144 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 938); Armed Forces Act 2006 s 175(7). The court must give reasons, on passing sentence, if it does not make a service compensation order in a case where it has power to do so: s 175(8). References to 'the court' are references to the court or officer sentencing the offender: s 175(9).

A person in whose favour a service compensation order is made is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal which could result in the order being varied or ceasing to have effect: Armed Forces Act 2006 s 176(1). Where the Supreme Court restores a conviction of a service offence, it may make any service compensation order which the court of trial could have made: s 176(2). Where a service compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made; and he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted: s 176(3). As to reviews of service compensation orders see Armed Forces Act 2006 s 177.

As to sentencing principles relating to the determination of compensation orders see s 250; and PARA 423A.3.

3. Service community orders (civilians and dismissed servicemen only)

A service community order is an order (1) imposing on the offender one or more of the requirements mentioned in the Criminal Justice Act 2003 s 177(1) (community orders) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 171); and (2) specifying the local justice area in England and Wales, or (as the case may be) the locality in Scotland or the petty sessions district in Northern Ireland, where the offender resides or will reside: Armed Forces Act 2006 s 178(1). The power to include in the order one or more of the requirements mentioned in the Criminal Justice Act 2003 s 177(1) is subject to (a) any restriction that s 177(1) imposes in relation to a particular requirement; (b) the provisions of the 2003 Act mentioned in s 177(2); and (c) the 2003 Act s 218 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 271, 283-284); Armed Forces Act 2006 s 178(2). In the Criminal Justice Act 2003 s 177(3)-(6) (provision about the making of community orders), s 178 (power to provide for court review of community orders) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 175), and Pt 12 Ch 4 (ss 196-223) (further provision about orders) 'community order' includes a service community order under the Armed Forces Act 2006: s 178(3). In those provisions in their application in relation to a service community order under the Armed Forces Act 2006, 'court' includes a relevant service court; and each of the following is a relevant service court: the Court Martial, the Service Civilian Court, the Court Martial Appeal Court, the Supreme Court on an appeal brought from the Court Martial Appeal Court: s 178(4), (6). The Criminal Justice Act 2003 s 207(3)(a)(ii) (condition for mental health treatment requirement) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 278), and s 219(3) (requirement to give copy of order to magistrates' court) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 171) do not apply in relation to a service community order under the Armed Forces Act 2006: s 178(5).

As to periodic reviews of service community orders see Armed Forces Act 2006 s 179, and as to the transfer of service community orders to Scotland or Northern Ireland where the offender lives or will live there see s 180. Provision for the enforcement, revocation or amendment of service community orders is made by s 181, Sch 5 Pt 1 (paras 1-9) (Sch 5 para 1 amended by

Criminal Justice and Immigration Act 2008 Sch 26 para 82(1), (3)) (which apply the Criminal Justice Act 2003 Sch 8 to service community orders).

4. Overseas community orders (civilians only)

An overseas community order is an order imposing on the offender one or more of the requirements mentioned in the Criminal Justice Act 2003 s 177(1) (community orders) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 171), and not specifying anywhere as an area where the offender resides or will reside: Armed Forces Act 2006 s 182(1). The order may include a particular requirement mentioned in the Criminal Justice Act 2003 s 177(1) only if the court is satisfied (1) that the requirement, and the arrangements (if any are needed) that will be made in connection with it, are such that the offender will be able to comply with the requirement in the area where he resides or will reside; and (2) that arrangements will be made for the supervision of his compliance with the requirement: Armed Forces Act 2006 s 182(2). The power to include in the order one or more of the requirements mentioned in the Criminal Justice Act 2003 s 177(1) is also subject to the provisions mentioned in s 177(2), and the Armed Forces Act 2006 Sch 6 (special provisions for young offenders): s 182(3). Subject to s 183, in the Criminal Justice Act 2003 s 177(5), (6) (provision about the making of community orders) and Pt 12 Ch 4 (ss 196-223) (further provision about orders) 'community order' includes an overseas community order under the Armed Forces Act 2006: s 182(4). In those provisions in their application in relation to an overseas community order, 'court' includes a relevant service court; and each of the following is a relevant service court: the Court Martial, the Service Civilian Court, the Court Martial Appeal Court, the Supreme Court on an appeal brought from the Court Martial Appeal Court: s 182(5), (6). As to the modification of the Criminal Justice Act 2003 Pt 12 Ch 4 (ss 196-223) (which contains general provisions applicable to community orders) in its application to overseas community orders, see the Armed Forces Act 2006 s 183 (amended by SI 2008/912). Provision for the enforcement, revocation or amendment of overseas community orders is made by the Armed Forces Act 2006 s 184, Sch 5 Pt 2 (paras 10-23) (Sch 5 para 10 amended by Criminal Justice and Immigration Act 2008 Sch 26 para 82(1), (4)) (which applies the Criminal Justice Act 2003 Sch 8 to overseas community orders).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

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424B. Imprisonment for term of under 12 months.

The Armed Forces Act 2006 Pt 8 Ch 4 (ss 196-207) deals with the powers of service courts to pass sentences of imprisonment for less than 12 months. It applies, with modifications, provisions of the Criminal Justice Act 2003 which enable civilian courts in England and Wales to pass sentences of 'custody plus' and to suspend a sentence of imprisonment. As to 'custody plus' orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 98 et seq.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

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424C. Mandatory sentences.

If a person is convicted by the Court Martial of an offence under the Armed Forces Act 2006 s 42 (criminal conduct) (see PARA 422) and the corresponding offence under the law of England and Wales is under that law (1) murder; or (2) any other offence the sentence for which is fixed by law as imprisonment for life, the court must sentence him to imprisonment for life unless he is liable to be detained under the Armed Forces Act 2006 s 218 (offences committed when offender aged under 18) (see PARA 432): s 217.

Where a person aged 18 or over is convicted by the Court Martial of an offence under s 42, the corresponding offence under the law of England and Wales is a serious offence, and the court is of the required opinion (defined by s 223 below), the Criminal Justice Act 2003 s 225(2)-(4) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 73-74) applies in relation to the offender: Armed Forces Act 2006 s 219(1), (2) (s 219(1) amended, s 219(2), (3) substituted by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 13). In the Criminal Justice Act 2003 s 225(2) and (3A) (as applied by the Armed Forces Act 2006 s 219(2)), references to 'the offence' are to be read as references to the offence under s 42: s 219(3). For these purposes 'serious offence' has the meaning given by the Criminal Justice Act 2003 s 224 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 68, 70-71): Armed Forces Act 2006 s 219(4). A sentence under the Criminal Justice Act 2003 s 225 passed as a result of this provision is not to be regarded as a sentence fixed by law: Armed Forces Act 2006 s 219(5).

The following provisions apply where (a) a person aged 18 or over is convicted by the Court Martial of an offence under s 42; (b) the corresponding offence under the law of England and Wales is a specified offence; (c) the court is of the required opinion (defined by s 223); and (d) where the corresponding offence under the law of England and Wales is a serious offence, the case is not one in which the court is required by the Criminal Justice Act 2003 s 225(2) (as applied by the Armed Forces Act 2006 s 219(2)) to impose a sentence of imprisonment for life: s 220(1) (s 220(1), (3) amended, s 220(2) substituted, and s 220(3A) added by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 14). The Criminal Justice Act 2003 s 227(2)-(5) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 75) applies in relation to the offender: Armed Forces Act 2006 s 220(2). In the Criminal Justice Act 2003 s 227(2)-(5) as applied by this provision, (i) the reference in s 227(2A) to 'the offence' is to be read as a reference to the offence under the Armed Forces Act 2006 s 42; (ii) the reference in the Criminal Justice Act 2003 s 227(2C)(b) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England or Wales; (iii) the reference in s 227(3)(a) to s 153(2) is to be read as a reference to the Armed Forces Act 2006 s 261(2); (iv) the reference in s 227(4)(a) to a specified violent offence is to an offence under the Armed Forces Act 2006 s 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and (v) the reference in the Criminal Justice Act 2003 s 227(4)(b) to a specified sexual offence is to an offence under the Armed Forces Act 2006 s 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence: s 220(3). The power conferred by the Criminal Justice Act 2003 s 227(6) includes power to amend s 227(2B) as applied by this provision: Armed Forces Act 2006 s 220(3A). For the purposes of s 220, 'serious offence', 'specified offence', 'specified violent offence', and 'specified sexual offence', have the meanings given by the Criminal Justice Act 2003 s 224: Armed Forces Act 2006 s 220(4).

'The required opinion' for the purposes of ss 219(1), 220(1) (and for the purposes of ss 221(1) and 222(1) (see PARA 432) is the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, or further acts or omissions that would be specified offences if committed in England or Wales: s 223(1) (s 223(1)-(3) amended by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 17). For the purposes of the court's decision whether it is of that opinion, the Criminal Justice Act 2003 s 229(2), (2A) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 69) applies as it applies for the purposes of the assessment referred to in s 229(1): Armed Forces Act 2006 s 223(2). In the Criminal Justice Act 2003 s 229(2) as applied by this provision any reference to the offence mentioned in s 229(1)(a) is a reference to the offence under the Armed Forces Act 2006 s 42; and the reference to such a risk as is mentioned in the Criminal Justice Act 2003 s 229(1)(b) is a reference to such a risk as is mentioned in the Armed Forces Act 2006 s 223(1): s 223(3). In this provision, 'serious harm' and 'specified offence' have the meanings given by the Criminal Justice Act 2003 s 224: Armed Forces Act 2006 s 223(4).

As to mandatory sentences where a person aged 18 or over is convicted of a third drug trafficking offence or a third domestic burglary, see Armed Forces Act 2006 ss 225, 226. As to sentences for firearms offences, see s 227.

Where a sentence has been imposed on a person by virtue of s 219, 220, 225 or 226, and the court took account of a previous conviction which has since been set aside on appeal, an application for leave to appeal against the sentence may be lodged at any time within 29 days beginning with the day on which the previous conviction was set aside: see Armed Forces Act 2006 s 228.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/B. PUNISHMENTS APPLICABLE TO SERVICE PERSONNEL/424D. Court orders other than sentences.

424D. Court orders other than sentences.

The Court Martial or the Service Civilian Court (see PARA 520) may make an order under the Armed Forces Act 2006 s 229 where it convicts or acquits a person ('the defendant') of an offence, and the defendant is subject to service law or is a civilian subject to service discipline: s 229(1). An order under s 229 prohibits the defendant from doing anything described in the order and has effect for a fixed period specified in the order or until further order: s 229(2). Such an order may be made, and a prohibition may be included in the order, only for the purpose of protecting a person mentioned in the order from conduct which amounts to harassment: s 229(3). A person subject to service law or a civilian subject to service discipline commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by an order under this provision: s 229(4). As to the meaning of 'subject to service law' see PARA 303-313. A person guilty of an offence under s 229 is liable to any punishment mentioned in s 164 (see PARA 424), but any sentence of imprisonment imposed in respect of the offence must not exceed five years: s 229(5). In proceedings for an order under this provision, the Director of Service Prosecutions and the defence may lead (as further evidence) any evidence which would be admissible in proceedings in the High Court in England and Wales for an injunction under the Protection from Harassment Act 1997 s 3 (see TORT vol 97 (2010) PARA 557): Armed Forces Act 2006 s 229(6). For supplementary provision concerning restraining orders, see s 230. As to the right to appeal against the making of a service restraining order where a person was acquitted, or where the order was made after a person had successfully appealed against conviction, see s 231. The Court Martial may vary or revoke a service restraining order on an application made by the Director of Service Prosecutions, the defendant, or any other person mentioned in the order: see s 232. As to the evidential burden as respects excuses for offences under s 229, see Armed Forces Act 2006 s 325.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/B. PUNISHMENTS APPLICABLE TO SERVICE PERSONNEL/425. Imprisonment.

425. Imprisonment.

A service offender¹ sentenced to imprisonment² is required to be sentenced also to dismissal from Her Majesty's service with or without disgrace³. A warrant officer or non-commissioned officer⁴ sentenced to imprisonment is required also to be sentenced to reduction to the ranks⁵, and a rating of or above the rate of leading seaman so sentenced is required to be sentenced to disrating⁶.

Ordinarily the court will impose one sentence in respect of all the matters in the charge-sheet and which have been taken into consideration⁷, but where a person subject to naval discipline is convicted by a court-martial, or a person subject to military or air force law is convicted by a general court-martial or a field general court-martial, of two or more civil offences⁸, the court may award separate sentences for each charge, which may be ordered to run consecutively or concurrently⁹. A person may be sentenced to a sentence of imprisonment to run consecutively to a sentence of imprisonment which he is already serving¹⁰.

A person sentenced to imprisonment for more than 12 months must as soon as practicable be removed to the United Kingdom¹¹. There is, however, a power to make local arrangements for a prisoner to serve his sentence abroad where, for example, he has no family in the United Kingdom¹².

1 le a person subject to naval discipline or to military or air force law convicted of an offence under one of the service discipline Acts. As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante. As to the service discipline Acts see para 302 ante.

2 For the power to sentence a service offender to imprisonment, and the scale of punishments applicable to such offenders, see para 424 ante.

3 Army Act 1955 s 71(3) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Army Act 1955 s 71(3), (4) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 1(1)(a)); Air Force Act 1955 s 71(3) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Air Force Act 1955 s 71(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(1)(a)); Naval Discipline Act 1957 s 43(3) (s 43 substituted by the Armed Forces Act 1971 s 38; and the Naval Discipline Act 1957 s 43(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(2)). As to dismissal see further para 426 post. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 s 71(3) proviso (as so substituted); Air Force Act 1955 s 71(3) proviso (as so substituted); Naval Discipline Act 1957 s 42(3) (as so substituted).

The court must be fully informed of the effect of imprisonment which carries with it inevitable dismissal, or dismissal with disgrace, on pension and terminal grants: see *R v McEnhill* (1999) Times, 4 February, C-MAC. If the effects on a serviceman's pension are disproportionate the court should consider awarding detention (see para 427 post) rather than imprisonment and not imposing dismissal: *R v Cooney* [1999] 3 All ER 173, [1999] 2 Cr App Rep 428, C-MAC.

The requirement that a person sentenced to imprisonment should also be dismissed from the service does not apply to a person convicted summarily for offences in relation to a service court under the Army Act 1955 s 57(2) (as amended), the Air Force Act 1955 s 57(2) (as amended), or the Naval Discipline Act 1957 s 38(3) (as amended) (see para 411 ante): Army Act 1955 s 71(3) (as so substituted and amended); Air Force Act 1955 s 71(3) (as so substituted and amended); Naval Discipline Act 1957 s 43(3) (as so substituted and amended).

4 As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante.

5 Army Act 1955 s 71(4) (as substituted and amended: see note 3 supra); Air Force Act 1955 s 71(4) (as substituted and amended: see note 3 supra); Naval Discipline Act 1957 s 43(1)(h), Sch 1 para 1, 2 (s 43 as substituted: see note 3 supra). An officer, warrant officer, non-commissioned officer or marine of the marine

forces when borne on the books of any of Her Majesty's ships or naval establishments, and a member of Her Majesty's military or air forces who is attached to Her Majesty's naval forces under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended), is also required to be reduced to the ranks, rather than disrated, in these circumstances: see the Naval Discipline Act 1957 ss 112, 113, Sch 1 para 2, Sch 2 para 5 (s 112 amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2); Naval Discipline Act 1957 Sch 1 para 2 substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(6); Naval Discipline Act 1957 Sch 2 para 5 substituted by the Armed Forces Act 1971 Sch 1 para 2(7)). As to reduction to the ranks see para 428 post. As to Her Majesty's ships see paras 6 note 3, 21 note 13 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 s 71(4) proviso (as so substituted); Air Force Act 1955 s 71(4) proviso (as so substituted).

6 Naval Discipline Act 1957 s 43(4) (as substituted and amended: see note 3 supra). See, however, in connection with officers and marines of the marine forces, and attached members of the army or air force, note 5 supra. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: s 43(3) (as so substituted). A sentence of disrating awarded or deemed to have been awarded in compliance with s 43(4) (as so substituted and amended) must be one reducing the offender to such rate as may be prescribed in relation to persons of the class to which he belongs by regulations made by the Defence Council: s 43(5). As to disrating see para 428 post. As to the Defence Council see para 2 ante. Regulations made by the Defence Council are not statutory instruments and are not recorded in this work.

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 79(1); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 70(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 79(1).

8 As to the commission of civil offences by persons subject to naval discipline or to military or air force law see para 422 ante.

9 See the Army Act 1955 s 118A(3); the Air Force Act 1955 s 118A(3); and the Naval Discipline Act 1957 s 86(3) (all as added); and para 440 post.

10 See the Army Act 1955 s 118A(1) (as added); the Air Force Act 1955 s 118A(1) (as added); and the Naval Discipline Act 1957 s 86(1); and paras 440-441 post.

11 Army Act 1955 s 127(2) (amended by the Armed Forces Act 1991 s 26, Sch 2 para 1, Sch 3); Air Force Act 1955 s 127(2) (amended by the Armed Forces Act 1991 Sch 2 para 1, Sch 3); Naval Discipline Act 1957 s 82A(2) (s 82A added by the Armed Forces Act 1971 s 52(1)). This does not, however, apply in relation to any person belonging to a class of persons specified by or under imprisonment and detention rules (see para 515 post) or, as the case may be, naval detention quarters rules as persons whose removal to the United Kingdom would for reasons of climate, place of birth or place of enlistment or any other reason not be beneficial: Army Act 1955 s 127(3); Air Force Act 1955 s 127(3); Naval Discipline Act 1957 s 82A(3) (as so added). Where a person has been sentenced by a court-martial held out of the United Kingdom to imprisonment or detention for more than 12 months, he may, if so directed, not be required to be removed to the United Kingdom until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction: see the Army Act 1955 s 127(4), (6) (s 127(4) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); the Air Force Act 1955 s 127(4) (s 127(4) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); and the Naval Discipline Act 1957 s 82A(4), (6) (as so added). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

12 See the Army Act s 126 (as amended); the Air Force Act s 126 (as amended); the Naval Discipline Act 1957 s 82A(1) (as added); and paras 479, 518 post.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

425 Imprisonment

NOTES--As to sentencing principles regarding custodial sentences see PARAS 423, 423A.1, 423B.1 and 423B.2. As to imprisonment for terms of less than 12 months see PARA 424B; and as to mandatory sentences see PARA 424C.

TEXT AND NOTES 4, 5--As to the effect of a custodial sentence on the rank or rate of a warrant officer or non-commissioned officer, see now the Armed Forces Act 2006 s 293. A warrant officer or non-commissioned officer serving a custodial sentence (including one passed by a civilian court) is to be treated as holding the lowest rank or rate for the service to which he belongs, or, if he belongs to the air forces, the highest rank he has held as an airman: see s 294.

TEXT AND NOTE 11--See now the Armed Forces Act 2006 s 298, which provides for removal to England and Wales following the passing of a custodial sentence.

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426. Dismissal with or without disgrace.

A warrant officer or non-commissioned officer¹ sentenced to dismissal from Her Majesty's service, with or without disgrace², is required to be sentenced also to reduction to the ranks³, and a rating of or above the rate of leading seaman so sentenced is required also to be sentenced to disrating⁴.

1 As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante.

2 For the power to sentence a service offender (ie a person subject to naval discipline or to military or air force law convicted of an offence under one of the service discipline Acts) to dismissal, and the scale of punishments applicable to such offenders, see para 424 ante. As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante. As to the service discipline Acts see para 302 ante. As to dismissal procedure see the Manual of Naval Law vol II Ch 25 arts 2529-2530; the Queen's Regulations for the Army 1975 paras 9.396-9.397; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 paras 1118-1119.

Dismissal with disgrace may affect pension and other benefits: see eg *R v McEnhill* (1999) Times, 4 February, C-MAC; *R v Cooney* [1999] 3 All ER 173, [1999] 2 Cr App Rep 428, C-MAC; and para 423 ante.

3 Army Act 1955 s 71(4) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Army Act 1955 s 71(4) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 1(1)(a)); Air Force Act 1955 s 71(4) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Air Force Act 1955 s 71(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(1)(a)). An officer, warrant officer, non-commissioned officer or marine of the marine forces when borne on the books of any of Her Majesty's ships or naval establishments, and a member of Her Majesty's military or air forces who is attached to Her Majesty's naval forces under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended), is also required to be reduced to the ranks, rather than disrated, in these circumstances: see the Naval Discipline Act 1957 ss 112, 113, Sch 1 para 2, Sch 2 para 5 (s 112 amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2); the Naval Discipline Act 1957 Sch 1 para 2 substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(6); and the Naval Discipline Act 1957 Sch 2 para 5 substituted by the Armed Forces Act 1971 Sch 1 para 2(7)). As to reduction to the ranks see para 428 post. As to Her Majesty's ships see paras 6 note 3, 21 note 13 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required by the enactment in question: Army Act 1955 s 71(4) proviso (as so substituted); Air Force Act 1955 s 71(4) proviso (as so substituted).

4 Naval Discipline Act 1957 s 43(4) (s 43 substituted by the Armed Forces Act 1971 s 38; and the Naval Discipline Act 1957 s 43(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(2)). See, however, in connection with officers and marines of the marine forces, and attached members of the army or air force, note 3 supra. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Naval Discipline Act 1957 s 43(4) (as so substituted and amended). A sentence of disrating awarded or deemed to have been awarded in compliance with s 43(4) (as substituted and amended) must be one reducing the offender to such rate as may be prescribed in relation to persons of the class to which he belongs by regulations made by the Defence Council: s 43(5). As to disrating see para 428 post. As to the Defence Council see para 2 ante. Regulations made by the Defence Council are not statutory instruments and are not recorded in this work.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision

in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

426 Dismissal with or without disgrace

TEXT AND NOTES--As to the effect of a sentence of dismissal on rank or rate, see now the Armed Forces Act 2006 s 295.

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427. Detention.

A warrant officer or non-commissioned officer¹ sentenced to detention² is required to be sentenced also to reduction to the ranks³, and a rating of or above the rate of leading seaman so sentenced is required also to be sentenced to disrating⁴. A court-martial may impose only one term of detention, having no power to award separate sentences of detention on the same occasion⁵. The court has the power to order that a sentence of detention should run consecutively to a sentence of detention which the accused is already serving⁶. The total period of any such sentence must not exceed two years⁷.

A sentence of detention may not be awarded to an officer⁸.

1 As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante.

2 For the power to sentence a service offender (ie a person subject to naval discipline or to military or air force law convicted of an offence under one of the service discipline Acts) to detention, and the scale of punishments applicable to such offenders, see para 424 ante. As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante. As to the service discipline Acts see para 302 ante.

A sentence of detention will attract remission, not release on licence, of one third: see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 28(1)(c); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 28(1)(c). Accordingly an individual sentenced to detention for six months will serve four months whilst an individual sentenced to imprisonment for the same term will serve three months. Sentencing courts should bear this in mind particularly if some offenders on the same charge-sheet are sent to prison and others to detention. Although the court may sentence an individual to dismissal, dismissal is not automatic. As there are no community sentences available, sentences of detention tend to be imposed on those who before a civilian court might have received such a sentence. A soldier or airman under sentence in a military or air-force corrective training centre is entitled to a reimbursement allowance to purchase from the canteen of the establishment cigarettes, tobacco, sweets, chocolates, writing materials, postage stamps and other articles: see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 63, Sch 2; and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 63, Sch 2.

3 Army Act 1955 s 71(4) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Army Act 1955 s 71(4) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 1(1)(a)); Air Force Act 1955 s 71(4) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Air Force Act 1955 s 71(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(1)(a)). An officer, warrant officer, non-commissioned officer or marine of the marine forces when borne on the books of any of Her Majesty's ships or naval establishments, and a member of Her Majesty's military or air forces who is attached to Her Majesty's naval forces under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended), is also required to be reduced to the ranks, rather than disrated, in these circumstances: see the Naval Discipline Act 1957 ss 112, 113, Sch 1 para 2, Sch 2 para 5 (s 112 amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2); and the Naval Discipline Act 1957 Sch 1 para 2 substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(6); and the Naval Discipline Act 1957 Sch 2 para 5 substituted by the Armed Forces Act 1971 Sch 1 para 2(7)). As to reduction to the ranks see para 428 post. As to Her Majesty's ships see paras 6 note 3, 21 note 13 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 s 71(4) proviso (as so substituted); Air Force Act 1955 s 71(4) proviso (as so substituted).

4 Naval Discipline Act 1957 s 43(4) (s 43 substituted by the Armed Forces Act 1971 s 38; and the Naval Discipline Act 1957 s 43(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(2)). See, however, in connection with officers and marines of the marine forces, and attached members of the army or air force, note 3 supra. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Naval Discipline Act 1957 s 43(4) (as so substituted and amended). A sentence of disrating awarded or deemed to have been awarded in compliance with s 43(4) (as substituted and amended) must be one reducing the offender to such rate as may be

prescribed in relation to persons of the class to which he belongs by regulations made by the Defence Council: s 43(5). As to disrating see para 428 post. As to the Defence Council see para 2 ante. Regulations made by the Defence Council are not statutory instruments and are not recorded in this work.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 79(1); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 70(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 79(1). Cf, however, the situation with a sentence of imprisonment imposed by a general court-martial or field general court-martial (see para 425 ante).

6 See the Army Act 1955 s 118A(2) (as added); the Air Force Act 1955 s 118A(2) (as added); the Naval Discipline Act 1957 s 86(2); and para 440 post.

7 See paras 440-441 post.

8 Army Act 1955 s 71(2)(a) (as substituted: see note 3 supra); Air Force Act 1955 s 71(2)(a) (as substituted: see note 3 supra); Naval Discipline Act 1957 s 43(2)(a) (as substituted: see note 4 supra).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

427 Detention

TEXT AND NOTES--As to the effect of a sentence of service detention on the rank or rate of a warrant officer or non-commissioned officer, see now the Armed Forces Act 2006 s 293. A warrant officer or non-commissioned officer serving a sentence of service detention is to be treated as holding the lowest rank or rate for the service to which he belongs, or, if he belongs to the air forces, the highest rank he has held as an airman: see s 294.

NOTES--As to sentencing principles regarding service detention see PARAS 423A.1 and 423B.2.

NOTE 2--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

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428. Reduction to the ranks, and disrating.

A sentence of reduction to the ranks, or in rank¹, cannot be awarded to an officer or, because he has no rank to lose, a soldier or an airman²; however, it is applicable, in place of disrating, to officers, warrant officers, non-commissioned officers or marines of the marine forces when borne on the books of any of Her Majesty's ships³ or naval establishments⁴. An army or air force warrant officer who is reduced to the ranks may claim his discharge, except in time of war or emergency⁵.

A sentence of disrating⁶ may reduce the offender to any rate not lower than such rate as may be prescribed in relation to persons of the class to which he belongs by regulations made by the Defence Council⁷. The punishment of disrating cannot, however, be awarded to an officer or to a rating below the rate of leading seaman⁸ or to members of the Royal Marines, who, even when subject to naval discipline, are punishable by reduction to the ranks⁹.

1 For the power to sentence a person subject to military or air force law convicted of an offence under one of the service discipline Acts to reduction to the ranks, or reduction in rank, and the scale of punishments applicable to such offenders, see para 424 ante. As to the categories of persons subject to military or air force law see para 307 et seq ante. As to the service discipline Acts see para 302 ante. 'Rank' in this context includes acting rank (Army Act 1955 ss 143(3), 225(1) (amended by the Army and Air Force Act 1961 s 37); Air Force Act 1955 ss 143(3), 223(1) (amended by the Army and Air Force Act 1961 s 37)), and consequently an acting warrant officer or acting non-commissioned officer of the regular forces or the regular air force may be sentenced to reduction to the ranks or in rank. For the meaning of 'regular forces' see para 191 ante.

Reduction will affect pay, future promotion and sometimes the amount of pension or other benefits payable, and the court should consider these factors before passing such a sentence: see *R v McEnhill* (1999) Times, 4 February, C-MAC. Reduction in rank may also involve administrative discharge if the accused reaches a 'manning control point' without sufficient rank. Reduction in rank may have other effects, for instance it is necessary to be a non-commissioned officer to serve in the military police or royal air force police. If a non-commissioned officer is reduced to the ranks it is usually wrong in principle to fine him unless it is to relieve him of money which he has obtained by his crime and stoppages are not appropriate or for some other specific reason. This is because he may lose income for a considerable period by reason of his reduction. As to seniority in the lower rank following reduction see the Queen's Regulations for the Army 1975 paras 6.152-6.153.

2 Army Act 1955 s 71(2)(a), (d) (s 71 substituted by the Armed Forces Act 1971 s 36); Air Force Act 1955 s 71(2)(a), (d) (s 71 substituted by the Armed Forces Act 1971 s 36).

3 As to Her Majesty's ships see paras 6 note 3, 21 note 13 ante.

4 See the Naval Discipline Act 1957 s 112, Sch 1 paras 1, 2 (substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(6)). As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante.

5 Army Act 1955 s 15 (amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9(3)); Air Force Act 1955 s 15 (amended by the Reserve Forces Act 1996 (Consequential Provisions etc) Regulations 1998, SI 1998/3086, reg 9(3)).

6 For the power to sentence a person subject to naval discipline convicted of an offence under one of the service discipline Acts to disrating, and for the scale of punishments applicable to such offenders, see para 424 ante. As to the categories of persons subject to naval discipline see paras 306, 309 et seq ante.

7 Naval Discipline Act 1957 s 43(5) (s 43 substituted by the Armed Forces Act 1971 s 38). As to the Defence Council see para 2 ante. Regulations made by the Defence Council are not statutory instruments and are not recorded in this work.

8 Naval Discipline Act 1957 s 43(2)(a), (c) (as substituted: see note 7 supra).

9 See the text and notes 3-4 supra.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

428 Reduction to the ranks, and disrating

NOTES--As to sentencing principles relating to forfeiture of seniority and reduction in rank, see the Armed Forces Act 2006 s 248; and PARA 423A.2.

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429. Fines.

For any offence except a civil offence¹ the maximum fine which a court-martial may award² is the amount of the offender's pay for 28 or, if the offence in question was committed on active service³, 56 days⁴. A 'day's pay' for these purposes is the offender's gross pay, less any forfeiture, issuable in respect of the day on which the punishment is awarded, unless the offender is a special member of the reserve forces, in which case it is the pay that would have been issuable for that day if he had been an ordinary member of those forces of the same rank⁵.

Where the offence is a civil offence the maximum fine is the maximum which a civil court in England and Wales could award⁶.

¹ As to civil offences see para 422 ante.

² For the power to sentence a person subject to naval discipline or to military or air force law convicted of an offence under one of the service discipline Acts to a fine, and the scale of punishments applicable to such offenders, see para 424 ante. For the power to award a term of imprisonment in default of payment of a fine see para 439 post. As to the categories of persons subject to naval discipline, military or air force law see para 306 et seq ante. As to the service discipline Acts see para 302 ante.

³ For the meaning of 'on active service' see para 305 ante.

⁴ Army Act 1955 s 71(5)(a) (s 71 substituted by the Armed Forces Act 1971 s 36); Air Force Act 1955 s 71(5)(a) (s 71 substituted by the Armed Forces Act 1971 s 36); Naval Discipline Act 1957 s 43(6) (s 43 substituted by the Armed Forces Act 1971 s 38).

As to the power of a court-martial to order a further term of imprisonment to be served in default of payment of a fine, where a sentence of imprisonment and a fine is awarded, and as to the making of provision by royal warrant or other regulations or orders for the recovery of fines, see para 439 post. Where a fine has not been recovered when the offender ceases to be subject to service law (or would have so ceased but for the provisions enabling the trial and punishment of persons who have ceased to be subject to service law (see para 304 ante)), it may be possible to recover the fine by means of a financial penalty enforcement order: see para 61 ante.

⁵ Army Act 1955 s 71(5A) (s 71 as substituted (see note 4 supra); and s 71(5A), (5B) added by the Reserve Forces Act 1996 (Consequential Provisions) etc Regulations 1998, SI 1998/3086, reg 3(2)); Air Force Act 1955 s 71(5A) (s 71 as substituted (see note 4 supra); and s 71(5A), (5B) added by the Reserve Forces Act 1996 (Consequential Provisions) etc Regulations 1998, SI 1998/3086, reg 3(2)); Naval Discipline Act 1957 s 43(6A) (s 43 as substituted (see note 4 supra); and s 43(6A), (6B) added by the Reserve Forces Act 1996 (Consequential Provisions) etc Regulations 1998, SI 1998/3086, reg 3(3)). As to special members and ordinary members of reserve forces see para 251 ante.

⁶ Army Act 1955 s 71(5)(b); Air Force Act 1955 s 71(5)(b); Naval Discipline Act 1957 s 43(6)(a), (b) (all substituted: see note 4 supra).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision

in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

429 Fines

NOTES--As to sentencing principles concerning the fixing of fines, see the Armed Forces Act 2006 s 249; and PARAS 423A.3, 423B.4.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/C. PUNISHMENTS AND ORDERS APPLICABLE TO CIVILIANS SUBJECT TO SERVICE LAW/430. Scale of punishments and orders of general application to civilians.

C. PUNISHMENTS AND ORDERS APPLICABLE TO CIVILIANS SUBJECT TO SERVICE LAW

430. Scale of punishments and orders of general application to civilians.

Subject to the special provisions applicable to the treatment of young offenders¹, the punishments and orders² which may be awarded or made by sentence of a court-martial in respect of civilians who are subject to the provisions of the service discipline Acts relating to the punishment of offences³ but are not otherwise subject to service law⁴ are:

- 407 (1) imprisonment⁵;
- 408 (2) a fine⁶;
- 409 (3) a community supervision order⁷;
- 410 (4) a compensation order⁸;
- 411 (5) a conditional or absolute discharge⁹.

References in the service discipline Acts¹⁰ to any punishment provided (or, in the case of naval discipline, authorised) are, subject to the limitation imposed in any particular case by the addition of the word 'less', references to any one or more of these punishments or orders¹¹, each of which must be treated as less than any punishment which precedes it in the list and greater than any which follows it¹².

The Secretary of State may by regulations make provision supplementary or incidental to the provisions relating to the punishment of civilian offenders¹³.

1 The punishments and orders described in the text are those applicable to offenders aged 21 or over: Army Act 1955 s 209(3)(a)(i), (iii), Sch 5A para 15(3)(a), Table, col I (s 209(3)(a) substituted, and s 209(3)(aa), (ab) added, by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; the Army Act 1955 s 209(3)(a)(i) amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 4; the Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; and the Army Act 1955 Sch 5A, Table, col I amended by the Armed Forces Act 1986 s 10(2) and by the Armed Forces Act 2001 Sch 7 Pt 4); Air Force Act 1955 s 209(3)(a)(i), (iii), Sch 5A para 15(3)(a), Table, col I (s 209(3)(a) substituted, and s 209(3)(aa), (ab) added, by the Armed Forces Act 1976 Sch 9 para 5; the Air Force Act 1955 s 209(3)(a)(i) amended by the Armed Forces Act 2001 Sch 7 Pt 4; the Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; and the Air Force Act 1955 Sch 5A, Table, col I amended by the Armed Forces Act 1986 s 10(2) and by the Armed Forces Act 2001 Sch 7 Pt 4); Naval Discipline Act 1957 ss 118(2)(c), (3B), Sch 4A para 15(3)(a), Table, col I (s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; the Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; and the Naval Discipline Act 1957 Sch 4A, Table, col I amended by the Armed Forces Act 1986 s 10(2); and by the Armed Forces Act 2001 Sch 7 Pt 4).

As from a day to be appointed these punishments and orders are those applicable to offenders aged 18 or over: Army Act 1955 Sch 5A para 15(3)(a), Table, col I (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 12, 18(1), (3)(a), (b)(i)); Air Force Act 1955 Sch 5A para 15(3)(a), Table, col I (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 25(1), (3)(a), (b)(i)); Naval Discipline Act 1957 Sch 4A para 15(3)(a), Table, col I (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 32(1), (3)(a), (b)(i)). At the date at which this volume states the law no such day had been appointed.

For special provisions in connection with the punishment of young offenders see para 431 et seq post.

2 The penalties for which provision is made in the provisions of the service discipline Acts relating to the trial and punishment of civilians (see the text and notes 3-13 *infra*; and para 431 *et seq post*) are termed orders and not punishments because of their nature, but for the purposes of each of those Acts (eg for determining the powers of reviewing authorities) they are treated as punishments: Army Act 1955 s 209(3)(aa); Air Force Act 1955 s 209(3)(aa); Naval Discipline Act 1957 s 118(3B) (all as added: see note 1 *supra*). As to the service discipline Acts see para 302 *ante*.

3 In the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended). As to the extent to which, and the manner in which, civilians may be subject to these provisions see the Army Act 1955 s 209 (as amended), the Air Force Act 1955 s 209 (as amended), the Naval Discipline Act 1957 s 118 (as amended); and para 311 *ante*.

4 Unless any such civilian is employed in the service of, or accompanies, a body of the regular forces, or of the air force or of the naval forces, on active service, or is employed in the service of any part or member of a body of any of those forces on active service, he must of necessity be outside the United Kingdom in order to be subject to one or more of the service discipline Acts: see the Army Act 1955 s 209(2) (as amended); the Air Force Act 1955 s 209(2) (as amended); the Naval Discipline Act 1957 s 118(2) (as amended); and para 311 *ante*. For the meaning of 'regular forces' see para 191 *ante*. As to the United Kingdom see para 20 notes 1-2 *ante*.

5 Army Act 1955 ss 71(1)(b), 209(3)(a)(i) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Army Act 1955 s 209(3)(a) as substituted and amended (see note 1 *supra*)); Air Force Act 1955 ss 71(1)(b), 209(3)(a)(i) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Air Force Act 1955 s 209(3)(a) as substituted and amended (see note 1 *supra*)); Naval Discipline Act 1957 ss 43(1)(b), 118(2)(c) (s 43 substituted by the Armed Forces Act 1971 s 38). A person subject to naval discipline may also be sentenced to imprisonment for a term not exceeding two years, which is a lesser punishment than simple imprisonment: see the Naval Discipline Act 1957 ss 43(1)(b), 118(3), Sch 4 para 1(a) (s 43 as so substituted). As to the categories of persons subject to naval discipline see paras 306, 309 *et seq ante*.

As to the limited powers of district courts-martial and certain field general courts-martial to award imprisonment see para 480 *post*. As to young offenders see para 431 *post*. As to imprisonment generally see paras 424, 425 *ante*.

The Secretary of State may by order made by statutory instrument make such provision as appears to him to be appropriate to give courts-martial and standing civilian courts power to pass suspended and partly suspended sentences of imprisonment on civilians who are subject to the provisions of the service discipline Acts, and to give courts power to deal with offenders in respect of suspended and partly suspended sentences passed by courts-martial and standing civilian courts: Criminal Justice Act 1988 s 50(1), (2). Such an order may amend, apply or modify relevant legislation (see s 50(3), (4)), and is subject to annulment in pursuance of a resolution of either House of Parliament (s 50(5)). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 2 *ante*.

6 Army Act 1955 ss 71(1)(h), 209(3)(a)(i) (s 71 as substituted (see note 5 *supra*); s 209(3)(a) as substituted and amended (see note 1 *supra*)); Air Force Act 1955 ss 71(1)(h), 209(3)(a)(i) (s 71 as substituted (see note 5 *supra*); s 209(3)(a) as substituted and amended (see note 1 *supra*)); Naval Discipline Act 1957 s 43(1)(d), Sch 4 para 1(b) (s 43 as substituted: see note 5 *supra*).

The provisions of the Army Act 1955 s 71(5)(a) and the Air Force Act 1955 s 71(5)(a) (both as substituted) limiting the maximum amount of the fines which may be awarded (see para 429 *ante*) do not apply to the amount of the fines which may be awarded to civilians: Army Act 1955 s 209(3)(a)(i); Air Force Act 1955 s 209(3)(a)(i) (both as so substituted and amended). The corresponding provisions of the Naval Discipline Act 1957 s 43(6) (as substituted) (see para 429 *ante*) do, however, apply to limit the amount of the fines which may be awarded in respect of civilians subject to naval discipline: see s 43(6), Sch 4 para 1 (s 43 as so substituted).

Fines awarded to civilian offenders by courts-martial under the Army Act 1955 or the Air Force Act 1955 are recoverable in the United Kingdom or any colony as debts due to the Crown (Army Act 1955 s 209(4) (substituted by the Armed Forces Act 1976 Sch 9 para 7); Air Force Act 1955 s 209(4) substituted by the Armed Forces Act 1976 Sch 9 para 7). If a civilian offender ceases to be subject to naval discipline or military or air force law while a fine remains unsatisfied in whole or in part, a financial penalty enforcement order may be obtainable against him: see the Army Act 1955 s 133A; the Air Force Act 1955 s 133A; the Naval Discipline Act 1957 s 128F (all as added and amended); and para 61 *ante*. As to the meaning of 'colony' see para 20 note 4 *ante*.

7 Army Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 1 *supra*); Sch 5A para 4(1) amended by the Armed Forces Act 1986 ss 10(1), 16(2), Sch 2; and by the Armed Forces Act 1996 s 10, Sch 3 para 1(1), (2)); Air Force Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 1 *supra*); Sch 5A para 4(1) amended by the Armed Forces Act 1986 s 10(1), Sch 2; and by the Armed Forces Act 1996 Sch 3 para 1(1), (2)); Naval Discipline Act 1957 Sch 4A para 4(1) (Sch 4A as added (see note 1 *supra*); Sch 4A para 4(1) amended by the Armed Forces

Act 1986 s 10(1), Sch 2; and by the Armed Forces Act 1996 Sch 3 para 3(1), (2)). As to the making of community supervision orders see further para 435 post.

8 Army Act 1955 Sch 5A para 11(1) (Sch 5A as added (see note 1 supra); and Sch 5A para 11 amended by the Armed Forces Act 1991 s 9(1)(a), (2)); Air Force Act 1955 Sch 5A para 11(1) (Sch 5A as added (see note 1 supra); and Sch 5A para 11 amended by the Armed Forces Act 1991 s 9(1)(a), (2)); Naval Discipline Act 1957 Sch 4A para 11(1) (Sch 4A as added (see note 1 supra); and Sch 4A para 11 amended by the Armed Forces Act 1991 s 9(1)(b), (2)). As to the making of compensation orders see further para 436 post.

9 Army Act 1955 Sch 5A para 3(1) (Sch 5A as added (see note 1 supra); and Sch 5A para 3 amended by the Crime (Sentences) Act 1997 s 55, Sch 4 para 1(4); and prospectively amended by the Armed Forces Act 2001 Sch 3 para 4(a)); Air Force Act 1955 Sch 5A para 3(1) (Sch 5A as added (see note 1 supra); and Sch 5A para 3 amended by the Crime (Sentences) Act 1997 Sch 4 para 2(4); and prospectively amended by the Armed Forces Act 2001 Sch 3 para 4(a)); Naval Discipline Act 1957 Sch 4A para 3(1) (Sch 4A as added (see note 1 supra); and Sch 4A para 3 amended by the Crime (Sentences) Act 1997 Sch 4 para 3(4); and prospectively amended by the Armed Forces Act 2001 Sch 3 para 7(a)). As to the making of orders for discharge see para 437 post.

10 As to the service discipline Acts see para 302 ante.

11 Army Act 1955 s 209(3)(ab), Sch 5A para 15(1); Air Force Act 1955 s 209(3)(ab), Sch 5A para 15(1); Naval Discipline Act 1957 Sch 4A para 15(1) (all as added: see note 1 supra).

12 Army Act 1955 s 209(3)(ab), Sch 5A para 15(2)(a); Air Force Act 1955 s 209(3)(ab), Sch 5A para 15(2)(a); Naval Discipline Act 1957 Sch 4A para 15(2)(a) (all as added: see note 1 supra).

13 Army Act 1955 Sch 5A para 17(1); Air Force Act 1955 Sch 5A para 17(1); Naval Discipline Act 1957 Sch 4A para 17(1) (all as added: see note 1 supra). This power includes power to make provision for specified cases or classes of cases and, for these purposes, classes of cases may be defined by reference to any circumstances specified in the regulations; the power is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 Sch 5A para 17(2), (3); Air Force Act 1955 Sch 5A para 17(2), (3); Naval Discipline Act 1957 Sch 4A para 17(2), (3) (all as so added)). As to the regulations made see the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579; and paras 433, 435, 438 post.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

430 Scale of punishments and orders of general application to civilians

NOTE 5--Criminal Justice Act 1988 s 50 repealed: Armed Forces Act 2006 Sch 16 para 112.

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D. SPECIAL PROVISION FOR THE SENTENCING OF YOUNG OFFENDERS

431. Restrictions on sentencing of young offenders.

A person under 21 years of age¹ may not be sentenced to imprisonment².

A person aged under 21 who is convicted of murder, of any other civil offence the sentence for which is fixed by law as imprisonment for life, or of a second serious offence³, must be sentenced to custody for life⁴, and a person aged between 18 and 21 who is convicted of any other offence for which a person aged 21 or over would be liable to imprisonment for life must be sentenced to custody for life if the court considers that such a sentence would be appropriate⁵.

The only custodial sentences which a court may award where a person aged under 21 is convicted or found guilty of an offence are the sentence of custody for life in the circumstances described above⁶, or a custodial order⁷. The power to make a custodial order or to sentence an offender to custody for life is, however, subject to two exceptions: a person convicted of murder, or any other offence the sentence for which is fixed by law as life imprisonment, who was under 18 when the offence was committed, must be sentenced to be detained during Her Majesty's pleasure⁸; while a person aged 14 or over but under 18 who is found guilty of a serious civil offence for which the sentence is not fixed⁹, and a person under 14 found guilty of manslaughter, may be sentenced to be detained for such period, not exceeding the maximum term of imprisonment to which an adult committing that offence may be subject, as the court may specify¹⁰. An offender sentenced to detention or custody, under one or other of the excepted provisions¹¹, is required to be sentenced also to dismissal from Her Majesty's service with or without disgrace¹², while a warrant officer or non-commissioned officer¹³ so sentenced is required also to be sentenced to reduction to the ranks¹⁴, and a rating of or above the rate of leading seaman so sentenced is required to be sentenced to disrating¹⁵.

1 As to the determination of a person's age see para 386 ante.

2 Army Act 1955 s 71A(1) (s 71A added by the Armed Forces Act 1976 s 10(1); Army Act 1955 s 71A(1) amended by the Criminal Justice Act 1982 s 58, Sch 8 para 2(a)); Air Force Act 1955 s 71A(1) (s 71A added by the Armed Forces Act 1976 s 10(1); Air Force Act 1955 s 71A(1) amended by the Criminal Justice Act 1982 Sch 8 para 2(a)); Naval Discipline Act 1957 s 43A(1) (s 43A added by the Armed Forces Act 1976 s 10(1), (2); Naval Discipline Act 1957 s 43A(1) amended by the Criminal Justice Act 1982 Sch 8 para 2(a)).

As from a day to be appointed the minimum age for these purposes is reduced from 21 to 18: see the Army Act 1955 s 71A(1) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 12, 15(1)(a)); the Air Force Act 1955 s 71A(1) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(a)); and the Naval Discipline Act 1957 s 43A(1) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(a)). At the date at which this volume states the law no such day had been appointed.

3 I.e. an offence to which the Powers of Criminal Courts (Sentencing) Act 2000 s 109 (as amended) applies.

4 Army Act 1955 s 71A(1A) (s 71A as added (see note 2 supra); s 71A(1A)-(1C) added by the Criminal Justice Act 1982 Sch 8 para 2(b); and the Army Act 1955 s 71A(1A) amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 9); Air Force Act 1955 s 71A(1A) (s 71A as added (see note 2 supra); s 71A(1A)-(1C) added by the Criminal Justice Act 1982 Sch 8 para 2(b); and the Air Force Act 1955 s 71A(1A) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 14); Naval Discipline Act 1957 s

43A(1A) (s 43A as added (see note 2 supra); s 43A(1A)-(1C) added by the Criminal Justice Act 1982 Sch 8 para 2(b); and the Naval Discipline Act 1957 s 43A(1A) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 19).

As from a day to be appointed, the Army Act 1955 s 71A(1A)-(1C), the Air Force Act 1955 s 71A(1A)-(1C), and the Naval Discipline Act 1957 s 43A(1A)-(1C) (all as added and amended) are repealed by the Criminal Justice and Court Services Act 2000 s 75, Sch 7 paras 12, 15(1)(b), 19, 22(1)(b), 26, 29(1)(b), Sch 8. At the date at which this volume states the law no such day had been appointed.

A person who was under 18 years of age when the relevant offence was committed must be sentenced to be detained during Her Majesty's pleasure (see the text and notes 8-15 infra), and a person convicted of a second serious offence to which the Powers of Criminal Courts (Sentencing) Act 2000 s 109 (as amended) applies need not be sentenced to custody for life if the court is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify the court not passing such a sentence (s 109(2)).

5 Army Act 1955 s 71A(1B) (as added (see notes 2, 4 supra); and amended by the Criminal Justice Act 1991 s 71, Sch 9 para 1; and by the Armed Forces Act 1991 ss 2(1), (2), 26, Sch 3); Air Force Act 1955 s 71A(1B) (as added (see notes 2, 4 supra); and amended by the Criminal Justice Act 1991 Sch 9 para 1; and by the Armed Forces Act 1991 s 2(1), (2), Sch 3); Naval Discipline Act 1957 s 43A(1B) (as added (see notes 2, 4 supra); and amended by the Criminal Justice Act 1991 Sch 9 para 5; and by the Armed Forces Act 1991 s 2(1), (2), Sch 3). For the purposes of determining whether any method of dealing with such a person, other than sentencing him to custody for life, is appropriate, the court must obtain and consider information about the circumstances and must take into account any information before it which is relevant to the offender's character and physical and mental condition: Army Act 1955 s 71A(1C) (as added (see notes 2, 4 supra); Air Force Act 1955 s 71A(1C) (as added (see notes 2, 4 supra); Naval Discipline Act 1957 s 43A(1C) (as added (see notes 2, 4 supra)). As to the prospective repeal of these provisions see note 4 supra.

A court may not in these circumstances pass a sentence of custody for life unless it is satisfied that the circumstances, including the nature and gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment, and that the person in question qualifies for a custodial sentence: Army Act 1955 s 71A(1E)(b), (i), (ii) (s 71A as so added; s 71A(1D)-(1F) added by the Armed Forces Act 1991 s 2(1), (3)); Air Force Act 1955 s 71A(1E)(b), (i), (ii) (s 71A as so added; s 71A(1D)-(1F) added by the Armed Forces Act 1991 s 2(1), (3)); Naval Discipline Act 1957 s 43A(1E)(b), (i), (ii) (s 43A as so added; s 43A(1D)-(1F) added by the Armed Forces Act 1991 s 2(1), (3), (6)(a), (b)).

As from a day to be appointed, the Army Act 1955 s 71A(1E)(b) (as so added), the Air Force Act 1955 s 71A(1E)(b) (as so added) and the Naval Discipline Act 1957 s 43A(1E)(b) (as so added) are repealed by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 paras 12, 15(1)(d), 19, 22(1)(d), 26, 29(1)(d). At the date at which this volume states the law no such day had been appointed.

An offender qualifies for a custodial sentence: (1) if he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them (Army Act 1955 s 71A(1F)(a); Air Force Act 1955 s 71A(1F)(a); Naval Discipline Act 1957 s 43A(1F)(a) (all as so added)); (2) if only a custodial sentence would be adequate to protect the public from serious harm (Army Act 1955 s 71A(1F)(b); Air Force Act 1955 s 71A(1F)(b); Naval Discipline Act 1957 s 43A(1F)(b) (all as so added)); or (3) if the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified (Army Act 1955 s 71A(1F)(c); Air Force Act 1955 s 71A(1F)(c); Naval Discipline Act 1957 s 43A(1F)(c) (all as so added)). For these purposes, a sentence of detention for a term not exceeding two years under the Army Act 1955 s 71(1)(e), the Air Force Act 1955 s 71(1)(e), or the Naval Discipline Act 1957 s 43(1)(e) (all as substituted) (see para 427 ante) is treated as a non-custodial sentence and references to a custodial sentence are to be construed accordingly (Army Act 1955 s 71A(7) (s 71A as so added; and s 71A(7) added by the Armed Forces Act 1991 s 2(1), (5)); Air Force Act 1955 s 71A(7) (s 71A as so added; and s 71A(7) added by the Armed Forces Act 1991 s 2(1), (5)); Naval Discipline Act 1957 s 43A(7) (s 43A as so added; and s 43A(7) added by the Armed Forces Act 1991 s 2(1), (5), (6)(c)); and 'a history' implies a failure to respond to at least two non-custodial penalties (see *R v Crown Court at Southwark, ex p Ager* (1990) 91 Cr App Rep 322). It is submitted that the seriousness criterion applies to each offence looked at alone and not the totality of the accused's offending.

If a court passes a sentence of custody for life under the Army Act 1955 s 71A(1B), the Air Force Act 1955 s 71A(1B) or the Naval Discipline Act 1957 s 43A(1B) (all as added and amended; prospectively repealed), it must state in open court and record in the proceedings that it is satisfied that the offender qualifies for a custodial sentence (ie under heads (1)-(3) supra), under which of the provisions the offender so qualifies, and the reason why it is so satisfied, and must explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him: Army Act 1955 s 71AB(1)(b), (2) (s 71AB added by the Armed Forces Act 1991 s 4(1)); Air Force Act 1955 s 71AB(1)(b), (2) (s 71AB added by the Armed Forces Act 1991 s 4(1)); Naval Discipline Act 1957 s 43AB(1)(b), (2) (s 43AB added by the Armed Forces Act 1991 s 4(2)).

As from a day to be appointed, the Army Act 1955 s 71AB(1)(b) (as added), the Air Force Act 1955 s 71AB(1)(b) (as added) and the Naval Discipline Act 1957 s 43AB(1)(b) (as added) are repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 17, 19, 24, 26, 31, Sch 8. At the date at which this volume states the law no such day had been appointed.

6 Army Act 1955 s 71A(1D)(b); Air Force Act 1955 s 71A(1D)(b); Naval Discipline Act 1957 s 43A(1D)(b) (all as added: see notes 2, 5 *supra*).

As from a day to be appointed, the Army Act 1955 s 71A(1D)(b) (as added), the Air Force Act 1955 s 71A(1D)(b) (as added) and the Naval Discipline Act 1957 s 43A(1D)(b) (as added) are repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(c), 19, 22(1)(c), 26, 29(1)(c), Sch 8. At the date at which this volume states the law no such day had been appointed.

7 Army Act 1955 ss 71(1)(bb), 71A(1D) (s 71 substituted by the Armed Forces Act 1971 s 36; Army Act 1955 s 71(1) amended by the Armed Forces Act 1976 s 10(3)(b); Army Act 1955 s 71(1)(bb) added by the Armed Forces Act 1981 s 2(3)(a); Army Act 1955 s 71A(1D) as added (see notes 2, 5 *supra*); Air Force Act 1955 ss 71(1)(bb), 71A(1D) (s 71 substituted by the Armed Forces Act 1971 s 36; Air Force Act 1955 s 71(1) amended by the Armed Forces Act 1976 s 10(3)(b); Air Force Act 1955 s 71(1)(bb) added by the Armed Forces Act 1981 s 2(3)(a); Air Force Act 1955 s 71A(1D) as added (see notes 2, 5 *supra*); Naval Discipline Act 1957 ss 43(1)(bb), 43A(1D) (s 43 substituted by the Armed Forces Act 1971 s 38; Naval Discipline Act 1957 s 43(1) amended by the Armed Forces Act 1976 s 10(3)(d); Naval Discipline Act 1957 s 43(1)(bb) added by the Armed Forces Act 1981 s 2(3)(b); Naval Discipline Act 1957 s 43A(1D) as added (see notes 2, 5 *supra*)). The custodial order referred to in the text is a custodial order under the Army Act 1955 s 71AA (as added and amended), the Air Force Act 1955 s 71AA (as added and amended), or the Naval Discipline Act 1957 s 43AA (as added and amended), as the case may be (see para 433 *post*), or, if the offender is a civilian, under the Army Act 1955 Sch 5A para 10 (as added and amended), the Air Force Act 1955 Sch 5A para 10 (as added and amended), or the Naval Discipline Act 1957 Sch 4A para 10 (as added and amended), as the case may be (see further para 434 *post*): Army Act 1955 s 71A(1D); Air Force Act 1955 s 71A(1D); Naval Discipline Act 1957 s 43A(1D) (all as so added).

As from a day to be appointed, the sentence of custody for life will no longer be available and only the custodial order may be awarded; and the age limit will be 18 instead of 21: see the Army Act 1955 s 71A(1D) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(a)); Air Force Act 1955 s 71A(1D) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(a)); Naval Discipline Act 1957 s 43A(1D) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(a)). At the date at which this volume states the law no such day had been appointed.

8 Army Act 1955 s 71A(3) (s 71A as added (see note 2 *supra*); and s 71A(3) amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 4; and by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(e), (2)); Air Force Act 1955 s 71A(3) (s 71A as added (see note 2 *supra*); and s 71A(3) amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 4; and by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(e), (2)); Naval Discipline Act 1957 s 43A(3) (s 43A as added (see note 2 *supra*); and s 43A(3) amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 4; and by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(e), (2)). A person so sentenced is liable to be detained where directed and under conditions directed by the Secretary of State (Army Act 1955 s 71A(3) (as so added and amended); Air Force Act 1955 s 71A(3) (as so added and amended); Naval Discipline Act 1957 s 43A(3) (as so added and amended)), and a person so detained is, whilst so detained, deemed to be in legal custody (Army Act 1955 s 71A(6); Air Force Act 1955 s 71A(6); Naval Discipline Act 1957 s 43A(6) (all as so added)). Such a sentence, not being one of service detention or imprisonment, cannot be suspended, but it may be postponed: see the Army Act 1955 ss 120(1), 120A(1) (s 120A(1) as added); the Air Force Act 1955 ss 120(1), 120A(1) (s 120A(1) as added); and the Naval Discipline Act 1957 ss 89A(1), 90(1) (s 89A(1) as added; s 90(1) as amended); and paras 476-477, 514 *post*.

9 If an offence which is punishable by a civil court in England or Wales on indictment by, in the case of an adult, a term of imprisonment for 14 years or more: Army Act 1955 s 71A(4)(a); Air Force Act 1955 s 71A(4)(a); Naval Discipline Act 1957 s 43A(4)(a) (all as added: see note 2 *supra*). For the meaning of 'civil offence' see para 422 note 2 *ante*. For the meaning of 'civil court' see para 57 note 2 *ante*.

As from a day to be appointed, the relevant comparable offence is one punishable by a civil court in England or Wales on indictment, in the case of a person who has attained the age of 18 years, by a term of imprisonment for 14 years or more: Army Act 1955 s 71A(4)(a) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(f)); Air Force Act 1955 s 71A(4)(a) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(f)); Naval Discipline Act 1957 s 43A(4)(a) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(f)). At the date at which this volume states the law no such day had been appointed.

10 Army Act 1955 s 71A(4) (s 71A as added (see note 2 *supra*); and s 71A(4) amended by the Armed Forces Act 1991 s 2(1), (4); and the Criminal Justice Act 1991 s 71, Sch 9 para 1); Air Force Act 1955 s 71A(4) (s 71A as added (see note 2 *supra*); and s 71A(4) amended by the Armed Forces Act 1991 s 2(1), (4); and the Criminal Justice Act 1991 s 71, Sch 9 para 1); Naval Discipline Act 1957 s 43A(4) (s 43A as added (see note 2 *supra*); and s 43A(4) amended by the Armed Forces Act 1991 s 2(1), (4); and the Criminal Justice Act 1991 s 71, Sch 9 para 5).

As from a day to be appointed, the period of detention which the court may specify must not exceed the maximum term of imprisonment to which a person who has attained the age of 18 years committing that offence may be subject: Army Act 1955 s 71A(4) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(f)); Air Force Act 1955 s 71A(4) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(f)); Naval Discipline Act 1957 s 43A(4) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(f)). At the date at which this volume states the law no such day had been appointed.

A person may only be sentenced to detention if the court is of the opinion that none of the other methods in which the case may be legally dealt with is suitable, and where such a sentence has been passed, the person on whom it is passed is during the detention period liable to be detained in such place and on such conditions as the Secretary of State may direct: Army Act 1955 s 71A(4); Air Force Act 1955 s 71A(4); Naval Discipline Act 1957 s 43A(4) (all as so added and amended).

11 le under the Army Act 1955 s 71A(3) (as added and amended) or s 71A(4) (as added and amended), the Air Force Act 1955 s 71A(3) (as added and amended) or s 71A(4) (as added and amended), or the Naval Discipline Act 1957 s 43A(3) (as added and amended) or s 43A(4) (as added and amended).

12 Army Act 1955 ss 71(3), 71A(5) (s 71 as substituted (see note 7 supra); s 71(3), (4) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 1(1)(a); Army Act 1955 s 71A as added (see note 2 supra); s 71A(5) prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(g)); Air Force Act 1955 ss 71(3), 71A(5) (s 71 as substituted (see note 7 supra); s 71(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(1)(a); Air Force Act 1955 s 71A as added (see note 2 supra); s 71A(5) prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(g)); Naval Discipline Act 1957 ss 43(3), 43A(5) (s 43 as substituted (see note 7 supra); s 43(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(2); Naval Discipline Act 1957 s 43A as added (see note 2 supra); s 43A(5) prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(g)). As to dismissal see further para 426 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 s 71(3) proviso (as so substituted), s 71A(5) (as so added; prospectively amended); Air Force Act 1955 s 71(3) proviso (as so substituted), s 71A(5) (as so added; prospectively amended); Naval Discipline Act 1957 s 43(3) (as so substituted), s 43A(5) (as so added; prospectively amended).

The court must be fully informed of the effect of imprisonment which carries with it inevitable dismissal, or dismissal with disgrace, on pension and terminal grants: see *R v McEnhill* (1999) Times, 4 February, C-MAC. If the effects on a serviceman's pension are disproportionate the court should consider awarding detention (see para 427 post) rather than imprisonment and not imposing dismissal: *R v Cooney* [1999] 3 All ER 173, [1999] 2 Cr App Rep 428, C-MAC.

The requirement that a person sentenced to imprisonment should also be dismissed from the service does not apply to a person convicted summarily for offences in relation to a service court under the Army Act 1955 s 57(2) (as amended), the Air Force Act 1955 s 57(2) (as amended), or the Naval Discipline Act 1957 s 38(3) (as amended) (see para 411 ante): Army Act 1955 s 71(3) (as so substituted and amended), s 71A(5) (as so added; prospectively amended); Air Force Act 1955 s 71(3) (as so substituted and amended), s 71A(5) (as so added; prospectively amended); Naval Discipline Act 1957 s 43(3) (as so substituted and amended), s 43A(5) (as so added; prospectively amended).

13 As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante.

14 Army Act 1955 ss 71(4), 71A(5) (s 71(4) as substituted and amended (see notes 7, 12 supra); s 71A(5) as added and prospectively amended (see notes 2, 12 supra)); Air Force Act 1955 s 71(4), 71A(5) (s 71(4) as substituted and amended (see notes 7, 12 supra); s 71A(5) as added and prospectively amended (see notes 2, 12 supra)). An officer, warrant officer, non-commissioned officer or marine of the marine forces when borne on the books of any of Her Majesty's ships or naval establishments, and a member of Her Majesty's military or air forces who is attached to Her Majesty's naval forces under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended), is also required to be reduced to the ranks, rather than disrated, in these circumstances: see the Naval Discipline Act 1957 ss 112, 113, Sch 1 para 2, Sch 2 para 5 (s 112 amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2); Naval Discipline Act 1957 Sch 1 para 2 substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(6); Naval Discipline Act 1957 Sch 2 para 5 substituted by the Armed Forces Act 1971 Sch 1 para 2(7)). As to Her Majesty's ships see paras 6 note 3, 21 note 13 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 ss 71(4) proviso (as so substituted), s 71A(5) (as so added; prospectively amended); Air Force Act 1955 s 71(4) proviso (as so substituted), s 71A(5) (as so added; prospectively amended).

15 Naval Discipline Act 1957 ss 43(4), 43A(5) (s 43(4) as substituted and amended (see notes 7, 12 supra); s 43A(5) as added and prospectively amended (see notes 2, 12 supra)). See, however, in connection with officers and marines of the marine forces, and attached members of the army or air force, note 14 supra. Failure by the

court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Naval Discipline Act 1957 ss 43(4), 43A(5) (s 43(4) as so substituted and amended; s 43A(5) as so added; prospectively amended). A sentence of disrating awarded or deemed to have been awarded in compliance with s 43(4) (as substituted and amended) must be one reducing the offender to such rate as may be prescribed in relation to persons of the class to which he belongs by regulations made by the Defence Council: s 43(5) (as so substituted). As to the Defence Council see para 2 ante. Regulations made by the Defence Council are not statutory instruments and are not recorded in this work.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

431 Restrictions on sentencing of young offenders

TEXT AND NOTES--Replaced. See now the Armed Forces Act 2006 s 208 which provides that a person who is aged under 18 when convicted of an offence by the Court Martial or the Service Civilian Court must not be sentenced to imprisonment for the offence.

Where a person aged under 18 is convicted by the Court Martial of an offence under s 42 (criminal conduct) (see PARA 422) and the case is within any of s 209(2)-(4) below, the court may pass a sentence of detention if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable: Armed Forces Act 2006s 209(1), (5). The case is within s 209(2) if the corresponding offence under the law of England and Wales is under that law (1) an offence punishable in the case of an offender aged 18 or over with imprisonment for 14 years or more; and (2) not an offence the sentence for which is fixed by law: s 209(2). The case is within s 209(3) if the corresponding offence under the law of England and Wales is an offence under the Sexual Offences Act 2003 s 3 (sexual assault) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 169), s 13 (child sex offences committed by children or young persons) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 177), s 25 (sexual activity with a child family member) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 191), or s 26 (inciting a child family member to engage in sexual activity) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 191); Armed Forces Act 2006 s 209(3). The case is within s 209(4) if it falls within s 227(1) (certain firearms offences): s 209(4). Where s 209(5) applies, the court may pass a sentence of detention under s 209 if it is of the opinion that none of the other methods by which the offender may legally be dealt with is suitable: s 209(5). A sentence of detention under s 209 is a sentence that the offender be detained for such period (not exceeding the maximum term of imprisonment with which the offence under s 42 is punishable in the case of a person aged 18 or over) as may be specified in the sentence: s 209(6). Section 209(5), (6) is subject to, in particular, the Criminal Justice Act 2003 s 226(2) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82) (as applied by the Armed Forces Act 2006 s 221(2)) and the Armed Forces Act 2006 s 227 (required custodial sentences for certain offences) (see PARA 424C), and ss 260 and 261 (general restrictions on custodial sentences) (see PARA 432B.2): s 209(7) (amended by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 12).

A person sentenced to be detained under the Armed Forces Act 2006 s 209 is liable to be detained in such place, and under such conditions, as may be determined by the

Secretary of State or by such other person as may be authorised by him for the purpose: Armed Forces Act 2006 s 210(1). A person detained in pursuance of a sentence under s 209 is deemed to be in legal custody: s 210(2).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/D. SPECIAL PROVISION FOR THE SENTENCING OF YOUNG OFFENDERS/432. Scale of punishments and orders in respect of young offenders who are civilians.

432. Scale of punishments and orders in respect of young offenders who are civilians.

The punishments and orders¹ which may be awarded or made by sentence of a court-martial in respect of offenders aged 17 or over but under 21² who are subject to the provisions of the service discipline Acts³ relating to the punishment of offences⁴ but are not otherwise subject to service law⁵ are⁶:

- 412 (1) custody for life⁷ or, in certain cases, detention during Her Majesty's pleasure⁸;
- 413 (2) a custodial order⁹;
- 414 (3) a fine¹⁰;
- 415 (4) a community supervision order¹¹;
- 416 (5) a compensation order¹²;
- 417 (6) a conditional or absolute discharge¹³.

Where the offender is aged under 17, the punishments and orders which may be awarded are¹⁴:

- 418 (a) detention as the Secretary of State¹⁵ may direct¹⁶ or, in certain cases, during Her Majesty's pleasure¹⁷;
- 419 (b) a custodial order¹⁸;
- 420 (c) a fine¹⁹;
- 421 (d) a community supervision order²⁰;
- 422 (e) a compensation order²¹;
- 423 (f) an order binding over the offender's parent²²;
- 424 (g) a conditional or absolute discharge²³.

References in the service discipline Acts to any punishment provided (or, in the case of naval discipline, authorised) are, subject to the limitation imposed in any particular case by the addition of the word 'less', references to any one or more of these punishments or orders²⁴, each of which must be treated as less than any punishment which precedes it in the list and greater than any which follows it²⁵.

The Secretary of State may by regulations make provision supplementary or incidental to the provisions relating to the punishment of young offenders who are civilians²⁶.

1 See para 430 note 2 ante.

2 As to the age range to which these punishments and orders are applicable see note 6 infra.

3 As to the service discipline Acts see para 302 ante.

4 See para 430 note 3 ante.

5 See para 430 note 4 ante.

6 The punishments and orders which may be awarded or made by sentence of a court-martial in respect of offenders aged 17 or over but under 21 are applicable to offenders within that age range by virtue of the Army

Act 1955 s 209(3)(a)(i), (iii), Sch 5A para 15(3)(b), Table, col II (s 209(3)(a) substituted, and s 209(3)(ab) added, by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 s 209(3)(a)(i) amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 4; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A, Table, col II amended by the Criminal Justice Act 1982 s 58, Sch 8 para 11(a); and by the Armed Forces Act 2001 Sch 7 Pt 4; the Air Force Act 1955 s 209(3)(a)(i), (iii), Sch 5A para 15(3)(b), Table, col II (s 209(3)(a) substituted, and s 209(3)(ab) added, by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 s 209(3)(a)(i) amended by the Armed Forces Act 2001 Sch 7 Pt 4; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A, Table, col II amended by the Criminal Justice Act 1982 Sch 8 para 11(a); and by the Armed Forces Act 2001 Sch 7 Pt 4; and the Naval Discipline Act 1957 s 118(2)(c), (3B), Sch 4A para 15(3)(b), Table, col II (s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A, Table, col II amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 12(4)(a); and by the Armed Forces Act 2001 Sch 7 Pt 4).

As from a day to be appointed, these punishments and orders (other than custody for life: see the text and note 7 *infra*) are applicable to civilian offenders who at the date of their conviction have attained the age of 17 but are under 18: Army Act 1955 Sch 5A para 15(3)(b), Table, col II (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 12, 18(1), (3)(a), (b)(ii)); Air Force Act 1955 Sch 5A para 15(3)(b), Table, col II (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 25(1), (3)(a), (b)(ii)); Naval Discipline Act 1957 Sch 4A para 15(3)(b), Table, col II (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 32(1), (3)(a), (b)(ii)). At the date at which this volume states the law no such day had been appointed.

7 See the Army Act 1955 s 209(3)(a)(iii) (as substituted: see note 6 *supra*), Sch 5A para 15(3)(b), Table, col II (as added and amended: see note 6 *supra*), the Air Force Act 1955 s 209(3)(a)(iii) (as substituted: see note 6 *supra*), Sch 5A para 15(3)(b), Table, col II (as added and amended: see note 6 *supra*), and the Naval Discipline Act 1957 s 118(3B) (as added: see note 6 *supra*), Sch 4A para 15(3)(b), Table, col II (as added and amended: see note 6 *supra*).

As from a day to be appointed, a sentence of custody for life is no longer available in respect of persons within this age group (see the text and notes 2, 6 *supra*): see the Army Act 1955 Sch 5A, Table, col II (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 18(1), (3)(b)(iii), Sch 8); the Air Force Act 1955 Sch 5A, Table, col II (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 25(1), (3)(b)(iii), Sch 8); and the Naval Discipline Act 1957 Sch 4A, Table, col II (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 32(1), (3)(b)(iii), Sch 8). At the date at which this volume states the law no such day had been appointed.

8 Where a person is convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment and was under 18 years of age when the offence was committed, he must be sentenced to detention during Her Majesty's pleasure instead of to custody for life: Army Act 1955 Sch 5A para 15(3), Note (a)(i) (Sch 5A as added (see note 6 *supra*); Sch 5A para 15(3), Note (a) amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 18(3)(c)(i); and by the Armed Forces Act 2001 Sch 7 Pt 4; and the Army Act 1955 Sch 5A para 15(3), Note (a)(i) amended by the Criminal Justice Act 1982 Sch 8 para 11(b)); Air Force Act 1955 Sch 5A para 15(3), Note (a)(i) (Sch 5A as added (see note 6 *supra*); Sch 5A para 15(3), Note (a) amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 25(3)(c)(i); and by the Armed Forces Act 2001 Sch 7 Pt 4; and the Air Force Act 1955 Sch 5A para 15(3), Note (a)(i) amended by the Criminal Justice Act 1982 Sch 8 para 11(b)); Naval Discipline Act 1957 Sch 4A para 15(3), Note (a)(i) (Sch 4A as added (see note 6 *supra*); Sch 4A para 15(3), Note (a) amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 32(3)(c)(i); and by the Armed Forces Act 2001 Sch 7 Pt 4; and the Naval Discipline Act 1957 Sch 4A para 15(3), Note (a)(i) amended by the Armed Forces Act 1986 Sch 1 para 12(4)(b)). Note that detention during Her Majesty's pleasure is an alternative sentence to custody for life only until such time as that sentence is no longer available in respect of civilian offenders in this age range (see note 7 *supra*; and as to the age range see the text and note 6 *supra*), whereupon detention during Her Majesty's pleasure is an alternative sentence to a custodial order (see the text and note 9 *infra*).

9 See the Army Act 1955 Sch 5A para 10 (Sch 5A as added (see note 6 *supra*); Sch 5A para 10 amended by the Criminal Justice Act 1982 Sch 8 para 7(a)(i); the Armed Forces Act 1986 s 11(1)(a); and by the Armed Forces Act 1991 s 5(1), (2)(a)); the Air Force Act 1955 Sch 5A para 10 (Sch 5A as added (see note 6 *supra*); Sch 5A para 10 amended by the Criminal Justice Act 1982 Sch 8 para 7(a)(i); the Armed Forces Act 1986 s 11(1)(a); and by the Armed Forces Act 1991 s 5(1), (2)(a)); and the Naval Discipline Act 1957 Sch 4A para 10 (Sch 4A as added (see note 6 *supra*); Sch 4A para 10 amended by the Criminal Justice Act 1982 Sch 8 para 7(a)(i); the Armed Forces Act 1986 s 11(1)(a); and by the Armed Forces Act 1991 s 5(1), (2)(a)). As to the making of custodial orders see further para 433 *post*.

As from a day to be appointed, where a person is convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment and was under 18 years of age when the offence was committed, he must be sentenced to detention during Her Majesty's pleasure instead of to a custodial order: Army Act 1955

Sch 5A para 15(3), Note (a)(i) (Sch 5A as added (see note 6 supra); Sch 5A para 15(3), Note (a)(i) as amended (see note 8 supra); prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 18(3)(c)(ii)); Air Force Act 1955 Sch 5A para 15(3), Note (a)(i) (Sch 5A as added (see note 6 supra); Sch 5A para 15(3), Note (a)(i) as amended (see note 8 supra); prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 25(3)(c)(ii)); Naval Discipline Act 1957 Sch 4A para 15(3), Note (a)(i) (Sch 4A as added (see note 6 supra); Sch 4A para 15(3), Note (a)(i) as amended (see note 8 supra); prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 32(3)(c)(ii)). At the date at which this volume states the law no such day had been appointed.

10 Army Act 1955 ss 71(1)(h), 209(3)(a)(i) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Army Act 1955 s 209(3)(a) as substituted and amended (see note 6 supra)); Air Force Act 1955 ss 71(1)(h), 209(3)(a)(i) (s 71 substituted by the Armed Forces Act 1971 s 36; and the Air Force Act 1955 s 209(3)(a) as substituted and amended (see note 6 supra)); Naval Discipline Act 1957 s 43(1)(d), Sch 4 para 1(b) (s 43 substituted by the Armed Forces Act 1971 s 38). As to fines see further para 430 note 6 ante.

11 Army Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 6 supra); Sch 5A para 4(1) amended by the Armed Forces Act 1986 ss 10(1), 16(2), Sch 2; and by the Armed Forces Act 1996 s 10, Sch 3 para 1(1), (2)); Air Force Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 6 supra); Sch 5A para 4(1) amended by the Armed Forces Act 1986 s 10(1), Sch 2; and by the Armed Forces Act 1996 Sch 3 para 1(1), (2)); Naval Discipline Act 1957 Sch 4A para 4(1) (Sch 4A as added (see note 6 supra); Sch 4A para 4(1) amended by the Armed Forces Act 1986 s 10(1), Sch 2; and by the Armed Forces Act 1996 Sch 3 para 3(1), (2)). As to the making of community supervision orders see further para 435 post.

12 Army Act 1955 Sch 5A para 11(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 11 amended by the Armed Forces Act 1991 s 9(1)(a), (2)); Air Force Act 1955 Sch 5A para 11(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 11 amended by the Armed Forces Act 1991 s 9(1)(a), (2)); Naval Discipline Act 1957 Sch 4A para 11(1) (Sch 4A as added (see note 6 supra); and Sch 4A para 11 amended by the Armed Forces Act 1991 s 9(1)(b), (2)). As to the making of compensation orders see further para 436 post.

13 Army Act 1955 Sch 5A para 3(1) (Sch 5A as added see note 6 supra); and Sch 5A para 3 amended by the Crime (Sentences) Act 1997 s 55, Sch 4 para 1(4); prospectively amended by the Armed Forces Act 2001 Sch 3 para 4(a)); Air Force Act 1955 Sch 5A para 3(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 3 amended by the Crime (Sentences) Act 1997 Sch 4 para 2(4); prospectively amended by the Armed Forces Act 2001 Sch 3 para 4(a)); Naval Discipline Act 1957 Sch 4A para 3(1) (Sch 4A as added (see note 6 supra); and Sch 4A para 3 amended by the Crime (Sentences) Act 1997 Sch 4 para 3(4); prospectively amended by the Armed Forces Act 2001 Sch 3 para 7(a)). As to the making of orders for discharge see further para 437 post.

14 The punishments and orders which may be awarded or made by sentence of a court-martial in respect of offenders aged under 17 are applicable to offenders within that age range by virtue of the Army Act 1955 Sch 5A para 15(3)(c), Table, col III (Sch 5A as added (see note 6 supra); Sch 5A, Table, col III amended by the Armed Forces Act 1986 s 11(5); and by the Armed Forces Act 1991 ss 6(c), 26(2), Sch 3); the Air Force Act 1955 Sch 5A para 15(3)(c), Table, col III (Sch 5A as added (see note 6 supra); Sch 5A, Table, col III amended by the Armed Forces Act 1986 s 11(5); and by the Armed Forces Act 1991 s 6(c), Sch 3); and the Naval Discipline Act 1957 Sch 4A para 15(3)(c), Table, col III (Sch 4A as added (see note 6 supra); Sch 4A, Table, col III amended by the Armed Forces Act 1986 s 11(5); and by the Armed Forces Act 1991 s 6(c), Sch 3).

15 As to the Secretary of State see para 2 ante.

16 See the Army Act 1955 Sch 5A para 15(3)(c), Table, col III (Sch 5A as added (see note 6 supra); and Sch 5A para 15(3)(c), Table, col III as amended (see note 14 supra)); the Air Force Act 1955 Sch 5A para 15(3)(c), Table, col III (Sch 5A as added (see note 6 supra); and Sch 5A para 15(3)(c), Table, col III as amended (see note 14 supra)); and the Naval Discipline Act 1957 Sch 4A para 15(3)(c), Table, col III (Sch 4A as added (see note 6 supra); and Sch 4A para 15(3)(c), Table, col III as amended (see note 14 supra)). For the alternative to this sentence see the text and note 17 infra.

17 Where a person is convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment and was under 18 years of age when the offence was committed, he must be sentenced to detention during Her Majesty's pleasure instead of to such detention as the Secretary of State may direct: Army Act 1955 Sch 5A para 15(3), Note (a)(ii) (Sch 5A as added (see note 6 supra); and Sch 5A para 15(3), Note (a)(ii) as amended (see note 8 supra)); Air Force Act 1955 Sch 5A para 15(3), Note (a)(ii) (Sch 5A as added (see note 6 supra); and Sch 5A para 15(3), Note (a)(ii) as amended (see note 8 supra)); Naval Discipline Act 1957 Sch 4A para 15(3), Note (a)(ii) (Sch 4A as added (see note 6 supra); and Sch 4A para 15(3), Note (a)(ii) as amended (see note 8 supra)).

18 See the Army Act 1955 Sch 5A para 10 (Sch 5A as added (see note 6 supra); and Sch 5A para 10 as amended (see note 9 supra)); the Air Force Act 1955 Sch 5A para 10 (Sch 5A as added (see note 6 supra); and Sch 5A para 10 as amended (see note 9 supra)); and the Naval Discipline Act 1957 Sch 4A para 10 (Sch 4A as

added (see note 6 supra); and Sch 4A para 10 as amended (see note 9 supra)). As to the making of custodial orders see further para 433 post.

19 Army Act 1955 ss 71(1)(h), 209(3)(a)(i) (s 71 as substituted (see note 10 supra); s 209(3)(a) as substituted and amended (see note 6 supra)); Air Force Act 1955 ss 71(1)(h), 209(3)(a)(i) (s 71 as substituted (see note 10 supra); s 209(3)(a) as substituted and amended (see note 6 supra)); Naval Discipline Act 1957 s 43(1)(d), Sch 4 para 1(b) (s 43 as substituted (see note 10 supra)). In connection with fines see further para 430 note 6 ante.

20 Army Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 4(1) as amended (see note 11 supra)); Air Force Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 4(1) as amended (see note 11 supra)); Naval Discipline Act 1957 Sch 4A para 4(1) (Sch 4A as added (see note 6 supra); and Sch 4A para 4(1) as amended (see note 11 supra)). As to the making of community supervision orders see further para 435 post.

21 Army Act 1955 Sch 5A para 11(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 11 as amended (see note 12 supra)); Air Force Act 1955 Sch 5A para 11(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 11 as amended (see note 12 supra)); Naval Discipline Act 1957 Sch 4A para 11(1) (Sch 4A as added (see note 6 supra); and Sch 4A para 11 as amended (see note 12 supra)). As to the making of compensation orders see further para 436 post.

22 Such an order may require the offender's parent to pay a fine or compensation or to enter into a recognisance to exercise proper control over him: see the Army Act 1955 Sch 5A paras 13(1), 14(1) (Sch 5A as added (see note 6 supra); Sch 5A para 13(1) substituted by the Criminal Justice Act 1982 Sch 8 para 9 and amended by the Armed Forces Act 1986 Sch 1 para 11; Army Act 1955 Sch 5A para 14(1) amended by the Criminal Penalties (Increase, etc) Order 1984, SI 1984/447, art 2(1), Sch 1); the Air Force Act 1955 Sch 5A paras 13(1), 14(1) (Sch 5A as added (see note 6 supra); Sch 5A para 13(1) substituted by the Criminal Justice Act 1982 Sch 8 para 9 and amended by the Armed Forces Act 1986 Sch 1 para 11; Air Force Act 1955 Sch 5A para 14(1) amended by the Criminal Penalties (Increase, etc) Order 1984, SI 1984/447, Sch 1); and the Naval Discipline Act 1957 Sch 4A paras 13(1), 14(1) (Sch 4A as added (see note 6 supra); Sch 4A para 13(1) substituted by the Armed Forces Act 1986 Sch 1 para 12(1), (2); Naval Discipline Act 1957 Sch 4A para 14(1) amended by the Criminal Penalties (Increase, etc) Order 1984, SI 1984/447, Sch 1). As to the making of orders binding over an offender's parents see further para 438 post.

23 Army Act 1955 Sch 5A para 3(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 3 as amended (see note 13 supra)); Air Force Act 1955 Sch 5A para 3(1) (Sch 5A as added (see note 6 supra); and Sch 5A para 3 as amended (see note 13 supra)); Naval Discipline Act 1957 Sch 4A para 3(1) (Sch 4A as added (see note 6 supra); and Sch 4A para 3 as amended (see note 13 supra)). As to the making of orders for discharge see further para 437 post.

24 Army Act 1955 s 209(3)(ab), Sch 5A para 15(1); Air Force Act 1955 s 209(3)(ab), Sch 5A para 15(1); Naval Discipline Act 1957 Sch 4A para 15(1) (all as added: see note 6 supra).

25 Army Act 1955 s 209(3)(ab), Sch 5A para 15(2)(a); Air Force Act 1955 s 209(3)(ab), Sch 5A para 15(2)(a); Naval Discipline Act 1957 Sch 4A para 15(2)(a) (all as added: see note 6 supra). Note, however, that a fine or compensation order against an offender's parent or guardian (see the text and note 22 supra; and para 438 post) is treated as involving the same degree of punishment as a fine of the same amount on the offender or, as the case may be, a compensation order of the same amount against him: Army Act 1955 Sch 5A para 15(2)(b); Air Force Act 1955 Sch 5A para 15(2)(b); Naval Discipline Act 1957 Sch 4A para 15(2)(b) (all as so added).

26 See the Army Act 1955 Sch 5A para 17; the Air Force Act 1955 Sch 5A para 17; and the Naval Discipline Act 1957 Sch 4A para 17 (all as added: see note 6 supra).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

432 Scale of punishments and orders in respect of young offenders who are civilians

TEXT AND NOTES--Replaced.

Where life imprisonment is mandatory in the case of the corresponding civilian offence but the offender was under 18 at the time of the offence, the court must sentence him to be detained during Her Majesty's pleasure: see the Armed Forces Act 2006 s 218.

Where (1) a person aged under 18 is convicted by the Court Martial of an offence under s 42 (criminal conduct) (see PARA 422); (2) the corresponding offence under the law of England and Wales is a serious offence; and (3) the court is of the required opinion (defined by s 223 (see PARA 424C)), the Criminal Justice Act 2003 s 226(2)-(4) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82) applies in relation to the offender: Armed Forces Act 2006 s 221(1), (2) (s 221(1), (3) amended, s 221(2) substituted by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 15). In the Criminal Justice Act 2003 s 226(2) (as applied by the Armed Forces Act 2006 s 221(2)) references to 'the offence' are to be read as references to the offence under the Armed Forces Act 2006 s 42; and references to the Powers of Criminal Courts (Sentencing) Act 2000 s 91 are to be read as references to the Armed Forces Act 2006 s 209 (see PARA 431): s 221(3). In s 221 'serious offence' has the meaning given by the Criminal Justice Act 2003 s 224 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 68, 70-71): Armed Forces Act 2006 s 221(5). A sentence under the Criminal Justice Act 2003 s 226 passed as a result of this provision is not to be regarded as a sentence fixed by law: Armed Forces Act 2006 s 221(6). As to extended sentences of detention for certain violent or sexual offences see s 222 (amended by the Criminal Justice and Immigration Act 2008 Sch 25 paras 10, 16). The Armed Forces Act 2006 s 224 applies the Criminal Justice Act 2006 s 235 (place of detention etc) (see PRISONS) to sentences passed as a result of the Armed Forces Act 2006 s 221 or 222.

Where a person aged under 18 is convicted by the Court Martial or the Service Civilian Court of an offence which is punishable with imprisonment in the case of a person aged 18 or over, and the court is of the opinion that the offence is so serious that only a custodial sentence can be justified (see the Armed Forces Act 2006 s 260(2)), or the offender will not agree to a requirement which the court had proposed to include in a community punishment (see s 260(3)), the sentence that the court is to pass is (subject to s 211(2), (3)) an order that the person be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision: s 211(1). In the case of an offender aged under 15 at the time of the conviction, the court may not make such an order unless it is of the opinion that he is a persistent offender: s 211(2). In the case of an offender aged under 12 at the time of the conviction, the court may not make such an order unless (a) it is of the opinion mentioned in s 211(2); (b) it is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by him; and (c) the offence was committed on or after such date as may be appointed under the Powers of Criminal Courts (Sentencing) Act 2000 s 100(2)(b)(ii) (appointed day for purposes of orders under that Act) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89): Armed Forces Act 2006 s 211(3). Section 211(1) is also subject to ss 209, 218, 221, 222 and 227 (other custodial sentences that may or must be imposed in particular cases): s 211(4). The term of an order made under s 211 in respect of an offence is to be 4, 6, 8, 10, 12, 18 or 24 months; and may not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over: Armed Forces Act 2006 s 212(1).

As to the application of provisions governing detention and training orders made by civilian courts under the Powers of Criminal Courts (Sentencing) Act 2000 s 100 to orders made under the Armed Forces Act 2000 s 211, see s 213.

Where a person is convicted by a Court Martial or Service Civilian Court of a service offence punishable with imprisonment and committed during the supervision period, the court convicting him may make an order for his detention for a further period, up to the period of supervision that remained outstanding at the date of the new offence: see Armed Forces Act 2006 s 214. Two or more detention and training orders made under s 211 may be treated as a single order for the purpose of determining whether a further offence by the offender was committed during the term of such an order, and an order can therefore be made under s 214: see Armed Forces Act 2006 s 215.

An offender may appeal against an order for his detention under s 214 as if it were a new sentence for the original offence: see s 216.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/E. FURTHER PROVISION AS TO ORDERS/433. Custodial orders.

E. FURTHER PROVISION AS TO ORDERS

433. Custodial orders.

A court-martial may make a custodial order in respect of a person, including a civilian subject to service law¹, who has attained the age of 17 (or, in the case of a male civilian offender, 15) but is under 21, who is found guilty of an offence punishable with imprisonment². The effect of a custodial order is to commit the offender to be detained for a period to be specified in the order³. Until a day to be appointed⁴, that period must not be less than the appropriate minimum period⁵; as from the day appointed, it may not be less than the period of two months⁶. In either case, it may not exceed the maximum period for which the offender could have been sentenced to imprisonment if he had attained the age of 21⁷. A court may not make a custodial order unless it is satisfied that the circumstances, including the nature and gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment⁸, and that he qualifies for a custodial sentence⁹; and the court may not make a custodial order committing an offender aged 17 (or, in the case of a civilian offender, under 18) to be detained for a period exceeding 12 months or for a period such that the continuous period for which he is committed to be detained under that order and any one or more other custodial orders exceeds 12 months¹⁰.

1 A civilian offender who is subject to the provisions of the service discipline Acts relating to the punishment of offences (see the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt II (ss 1-43B) (as amended), Pt III (ss 45-92) (as amended)) may be made the subject of a custodial order: see para 432 ante. As to the service discipline Acts see para 302 ante. As to the extent to which, and the manner in which, civilians may be subject to these provisions see the Army Act 1955 s 209 (as amended); the Air Force Act 1955 s 209 (as amended); the Naval Discipline Act 1957 s 118 (as amended); and para 311 ante. A custodial order made in respect of a civilian offender must be drawn up in accordance with Form 2 as set out in the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, Sch 2 Pt I, or in a form substantially to the like effect (reg 10), and must be served in accordance with regs 3, 11(b), Sch 2 Pt II para 2. For the power to make such regulations see paras 430, 432 ante.

2 Army Act 1955 ss 71AA(1), (7), 209(3)(a)(iii), Sch 5A paras 1, 10(1) (s 71AA added by the Armed Forces Act 1981 s 2(1); Army Act 1955 s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 10(1) amended by the Criminal Justice Act 1982 s 58, Sch 8 para 7(a)(i); the Armed Forces Act 1986 s 11(1); and by the Armed Forces Act 1991 s 5(1), (2)(a)); Air Force Act 1955 ss 71AA(1), (7), 209(3)(a)(iii), Sch 5A paras 1, 10(1) (s 71AA added by the Armed Forces Act 1981 s 2(1); Air Force Act 1955 s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A para 10(1) amended by the Criminal Justice Act 1982 Sch 8 para 7(a)(i); the Armed Forces Act 1986 s 11(1); and by the Armed Forces Act 1991 s 5(1), (2)(a)); Naval Discipline Act 1957 ss 43AA(1), (7), 118(3B), Sch 4A paras 1, 10(1) (s 43AA added by the Armed Forces Act 1981 s 2(2); Naval Discipline Act 1957 s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A para 10(1) amended by the Criminal Justice Act 1982 Sch 8 para 7(a)(i); the Armed Forces Act 1986 s 11(1); and by the Armed Forces Act 1991 s 5(1), (2)(a)).

As from a day to be appointed, the upper age limit for these purposes is lowered to 18: Army Act 1955 s 71AA(1), Sch 5A para 10(1) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 12, 16(a)(i), 18(1), (2)(a)(i)); Air Force Act 1955 s 71AA(1), Sch 5A para 10(1) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 23(a)(i), 25(1), (2)(a)(i)); Naval Discipline Act 1957 s 43AA(1), Sch 4A para 10(1) (as so

added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 30(a)(i), 32(1), (2)(a)(ii). At the date at which this volume states the law no such day had been appointed.

Before making a custodial order in respect of a civilian offender, the court must consider any report made in respect of the offender by or on behalf of the Secretary of State: Army Act 1955 Sch 5A para 10(2); Air Force Act 1957 Sch 5A para 10(2); Naval Discipline Act 1957 Sch 4A para 10(2) (all as so added). The court must give a copy of any such report to the offender or any person representing him: Army Act 1955 Sch 5A para 10(3); Air Force Act 1957 Sch 5A para 10(3); Naval Discipline Act 1957 Sch 4A para 10(3) (all as so added). For the meaning of 'the court' see para 435 note 3 post. As to the Secretary of State see para 2 ante.

For further provisions in connection with persons subject to custodial orders see para 434 post.

3 Army Act 1955 s 71AA(1), Sch 5A para 10(1) (as added (see note 2 supra); s 71AA(1) amended by the Criminal Justice Act 1982 Sch 8 para 3(a)(ii)); Air Force Act 1955 s 71AA(1), Sch 5A para 10(1) (as added (see note 2 supra); s 71AA(1) amended by the Criminal Justice Act 1982 Sch 8 para 3(a)(ii)); Naval Discipline Act 1957 s 43AA(1), Sch 4A para 10(1) (as added (see note 2 supra); s 43AA(1) amended by the Criminal Justice Act 1982 Sch 8 para 3(a)(ii)).

4 As from a day to be appointed, the Army Act 1955 s 71AA(1)(a), Sch 5A para 10(1)(a) (s 71AA, Sch 5A as added; Sch 5A para 10(1) as amended), the Air Force Act 1955 s 71AA(1)(a), Sch 5A para 10(1)(a) (s 71AA, Sch 5A as added; Sch 5A para 10(1) as amended), and the Naval Discipline Act 1957 s 43AA(1)(a), Sch 4A para 10(1)(a) (s 43AA, Sch 4A as added; Sch 4A para 10(1) as amended) are prospectively substituted by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 16(a)(ii), 18(1), (2)(a)(ii), 19, 23(a)(ii), 25(1), (2)(a)(ii), 26, 30(a)(ii), 32(1), (2)(a)(ii). At the date at which this volume states the law no such day had been appointed.

5 Army Act 1955 s 71AA(1)(a), Sch 5A para 10(1)(a) (as added (see note 2 supra); substituted by the Criminal Justice Act 1991 s 71, Sch 9 paras 2(a), 4(a)); Air Force Act 1955 s 71AA(1)(a) (as added (see note 2 supra); substituted by the Criminal Justice Act 1991 Sch 9 paras 2(a), 4(a)); Naval Discipline Act 1957 s 43AA(1)(a), Sch 4A para 10(1)(a) (as added (see note 2 supra); substituted by the Criminal Justice Act 1991 Sch 9 paras 6(a), 8(a)). 'The appropriate minimum period' is 21 days (where the offender has attained 18 years of age) or two months (where the offender is under that age): Army Act 1955 s 71AA(1)(a)(i), (ii), Sch 5A para 10(1)(a)(i), (ii); Air Force Act 1955 s 71AA(1)(a)(i), (ii), Sch 5A para 10(1)(a)(i), (ii); Naval Discipline Act 1957 s 43AA(1)(a)(i), (ii), Sch 4A para 10(1)(a)(i), (ii) (all as so added and substituted).

6 Army Act 1955 s 71AA(1)(a), Sch 5A para 10(1)(a); Air Force Act 1955 s 71AA(1)(a), Sch 5A para 10(1)(a); Naval Discipline Act 1957 s 43AA(1)(a), Sch 4A para 10(1)(a) (all as added, substituted, and prospectively substituted: see notes 2, 4, 5 supra).

7 Army Act 1955 s 71AA(1)(b), Sch 5A para 10(1)(b) (as added (see note 2 supra); s 71AA(1)(b) amended, and Sch 5A para 10(1)(b) substituted, by the Criminal Justice Act 1991 Sch 9 paras 2(a), 4(a)); Air Force Act 1955 s 71AA(1)(b), Sch 5A para 10(1)(b) (as added (see note 2 supra); s 71AA(1)(b) amended, and Sch 5A para 10(1)(b) substituted, by the Criminal Justice Act 1991 Sch 9 paras 2(a), 4(a)); Naval Discipline Act 1957 s 43AA(1)(b), Sch 4A para 10(1)(b) (as added (see note 2 supra); amended by the Criminal Justice Act 1991 Sch 9 paras 6(a), 8(a)).

As from a day to be appointed, the age specified for these purposes is lowered to 18: Army Act 1955 s 71AA(1)(b), Sch 5A para 10(1)(b) (as so added, amended and substituted; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 16(a)(i), 18(1), (2)(a)(i)); Air Force Act 1955 s 71AA(1), Sch 5A para 10(1)(b) (as so added, amended and substituted; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 23(a)(i), 25(1), (2)(a)(i)); Naval Discipline Act 1957 s 43AA(1), Sch 4A para 10(1)(b) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 30(a)(i), 32(1), (2)(a)(i)). At the date at which this volume states the law no such day had been appointed.

8 Army Act 1955 s 71A(1E)(a), (i), Sch 5A para 10(1AA)(a) (s 71A added by the Armed Forces Act 1976 s 10(1); Army Act 1955 s 71A(1E), (1F) added by the Armed Forces Act 1991 s 2(1), (3); Army Act 1955 Sch 5A para 10 as added (see note 2 supra); Sch 5A para 10(1AA), (1AB) added by the Armed Forces Act 1991 s 5(1), (4)); Air Force Act 1955 s 71A(1E)(a), (i), Sch 5A para 10(1AA)(a) (s 71A added by the Armed Forces Act 1976 s 10(1); Air Force Act 1955 s 71A(1E), (1F) added by the Armed Forces Act 1991 s 2(1), (3); Air Force Act 1955 Sch 5A para 10 as added (see note 2 supra); Sch 5A para 10(1AA), (1AB) added by the Armed Forces Act 1991 s 5(1), (4)); Naval Discipline Act 1957 s 43A(1E)(a), (i), Sch 4A para 10(1AA)(a) (s 43A added by the Armed Forces Act 1976 s 10(1), (2); Naval Discipline Act 1957 s 43A(1E), (1F) added by the Armed Forces Act 1991 s 2(1), (3), (6)(a), (b); Naval Discipline Act 1957 Sch 4A para 10 as added (see note 2 supra); Sch 4A para 10(1AA), (1AB) added by the Armed Forces Act 1991 s 5(1), (4)). For the purpose of determining whether it is satisfied, with respect to any offender, that the circumstances, including the nature and gravity of the offence, are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment, the court must obtain and consider information about the circumstances, and must take into account any information before the court which is relevant to the offender's character and his physical and mental condition: Army Act 1955 s 71AA(1B),

Sch 5A para 10(1B) (s 71AA, Sch 5A para 10 as added (see note 2 supra); s 71AA(1B) added by the Criminal Justice Act 1982 Sch 8 para 3(b); Army Act 1955 s 71AA(1B) amended by the Armed Forces Act 1991 s 3(3); Army Act 1955 Sch 5A para 10(1A), (1B) added by the Criminal Justice Act 1982 Sch 8 para 7(b); and amended by the Armed Forces Act 1991 s 5(1), (5)); Air Force Act 1955 s 71AA(1B), Sch 5A para 10(1B) (s 71AA, Sch 5A para 10 as added (see note 2 supra); s 71AA(1B) added by the Criminal Justice Act 1982 Sch 8 para 3(b); Air Force Act 1955 s 71AA(1B) amended by the Armed Forces Act 1991 s 3(3); Air Force Act 1955 Sch 5A para 10(1A), (1B) added by the Criminal Justice Act 1982 Sch 8 para 7(b); and amended by the Armed Forces Act 1991 s 5(1), (5)); Naval Discipline Act 1957 s 43AA(1B), Sch 4A para 10(1B) (s 43AA, Sch 4A para 10 as added (see note 2 supra); s 43AA(1B) added by the Criminal Justice Act 1982 Sch 8 para 3(b); Naval Discipline Act 1957 s 43AA(1B) amended by the Armed Forces Act 1991 s 3(3), (4); Naval Discipline Act 1957 Sch 4A para 10(1A), (1B) added by the Criminal Justice Act 1982 Sch 8 para 7(b); and amended by the Armed Forces Act 1991 s 5(1), (5)).

As from a day to be appointed, the age specified for these purposes is lowered to 18: Army Act 1955 s 71A(1E) (i), Sch 5A para 10(1AA)(a) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 15(1)(a), 18(1), (2)(c)); Air Force Act 1955 s 71A(1E)(i), Sch 5A para 10(1AA)(a) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 22(1)(a), 25(1), (2)(c)); Naval Discipline Act 1957 s 43A(1E)(i), Sch 4A para 10(1AA)(a) (as so added; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 29(1)(a), 32(1), (2)(c)). At the date at which this volume states the law no such day had been appointed.

9 Army Act 1955 s 71A(1E)(a), (ii), Sch 5A para 10(1AA)(b); Air Force Act 1955 s 71A(1E)(a), (ii), Sch 5A para 10(1AA)(b); Naval Discipline Act 1957 s 43A(1E)(a), (ii), Sch 4A para 10(1AA)(b) (all as added: see notes 2, 8 supra). An offender qualifies for a custodial sentence: (1) if he has a history of failure to respond to non-custodial sentences and is unable or unwilling to respond to them (Army Act 1955 s 71A(1F)(a), Sch 5A para 10(1AB)(a); Air Force Act 1955 s 71A(1F)(a), Sch 5A para 10(1AB)(a); Naval Discipline Act 1957 s 43A(1F)(a), Sch 4A para 10(1AB)(a) (all as so added)); (2) if only a custodial sentence would be adequate to protect the public from serious harm (Army Act 1955 s 71A(1F)(b), Sch 5A para 10(1AB)(b); Air Force Act 1955 s 71A(1F)(b), Sch 5A para 10(1AB)(b); Naval Discipline Act 1957 s 43A(1F)(b), Sch 4A para 10(1AB)(b) (all as so added)); or (3) if the offence of which he has been convicted or found guilty was so serious that a non-custodial sentence for it cannot be justified (Army Act 1955 s 71A(1F)(c), Sch 5A para 10(1AB)(c); Air Force Act 1955 s 71A(1F)(c), Sch 5A para 10(1AB)(c); Naval Discipline Act 1957 s 43A(1F)(c), Sch 4A para 10(1AB)(c) (all as so added)). For these purposes, in the case of a non-civilian offender, a sentence of detention for a term not exceeding two years under the Army Act 1955 s 71(1)(e), the Air Force Act 1955 s 71(1)(e), or the Naval Discipline Act 1957 s 43(1)(e) (all as substituted) (see paras 424, 427 ante) is treated as a non-custodial sentence and references to a custodial sentence are to be construed accordingly (Army Act 1955 s 71A(7) (s 71A as so added; s 71A(7) added by the Armed Forces Act 1991 s 2(1), (5)); Air Force Act 1955 s 71A(7) (s 71A as so added; s 71A(7) added by the Armed Forces Act 1991 s 2(1), (5)); Naval Discipline Act 1957 s 43A(7) (s 43A as so added; s 43A(7) added by the Armed Forces Act 1991 s 2(1), (5), (6)(c)); and 'a history' implies a failure to respond to at least two non-custodial penalties (see *R v Crown Court at Southwark, ex p Ager* (1990) 91 Cr App Rep 322). It is submitted that the seriousness criterion applies to each offence looked at alone and not the totality of the accused's offending. For the purpose of determining whether it is satisfied, with respect to an offender, that he qualifies for a custodial sentence, the court must obtain and consider information about the circumstances, and must take into account any information before the court which is relevant to the offender's character and his physical and mental condition: Army Act 1955 s 71AA(1B), Sch 5A para 10(1B); Air Force Act 1955 s 71AA(1B), Sch 5A para 10(1B); Naval Discipline Act 1957 s 43AA(1B), Sch 4A para 10(1B) (all as added and amended: see notes 2, 8 supra).

If a court makes a custodial order under these provisions it must state in open court and record in the proceedings:

- 125 (a) that it is satisfied that the offender qualifies for a custodial sentence under the Army Act 1955 s 71A(1F)(a), (b) or (c), the Air Force Act 1955 s 71A(1F)(a), (b) or (c), or the Naval Discipline Act 1957 s 43A(1F)(a), (b) or (c) (all as added), as the case may be, or, in the case of a civilian offender, under the Army Act 1955 Sch 5A para 10(1AB)(a), (b) or (c), the Air Force Act 1955 Sch 5A para 10(1AB)(a), (b) or (c), or the Naval Discipline Act 1957 Sch 4A para 10(1AB)(a), (b) or (c) (all as added), as the case may be;
- 126 (b) under which of those provisions the offender so qualifies; and
- 127 (c) the reason why it is so satisfied,

and must explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him: Army Act 1955 s 71AB(1)(a), (2), Sch 5A para 10(3A) (s 71AB added by the Armed Forces Act 1991 s 4(1); Army Act 1955 Sch 5A para 10 as added (see note 2 supra); Sch 5A para 10(3A), (3B) added by the Criminal Justice Act 1982 Sch 8 para 7(c); and substituted by the Armed Forces Act 1991 s 5(1), (6)); Air Force Act 1955 s 71AB(1)(a), (2), Sch 5A para 10(3A) (s 71AB added by the Armed Forces Act 1991 s 4(1); Air Force Act 1955 Sch 5A para 10 as added (see note 2 supra); Sch 5A para 10(3A), (3B) added by the Criminal Justice Act 1982 Sch 8 para 7(c); and substituted by the Armed Forces Act 1991 s 5(1), (6)); Naval Discipline Act 1957 s

43AB(1)(a), (2), Sch 4A para 10(3A) (s 43AB added by the Armed Forces Act 1991 s 4(2); Naval Discipline Act 1957 Sch 4A para 10 as added (see note 2 supra); Sch 4A para 10(3A), (3B) added by the Criminal Justice Act 1982 Sch 8 para 7(c); and substituted by the Armed Forces Act 1991 s 5(1), (6), (10)). Where a court makes a custodial order and in accordance with this duty makes such a statement, the matters stated must be specified in the order made under imprisonment and detention rules (see para 515 post) pursuant to which the offender is committed into custody (in the case of a person subject to military or air force law) or the committal order (in the case of a person subject to naval discipline): Army Act 1955 s 71AB(3), Sch 5A para 10(3B); Air Force Act 1955 s 71AB(3), Sch 5A para 10(3B); Naval Discipline Act 1957 s 43AB(3), Sch 4A para 10(3B) (all as so added and substituted). As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

10 Army Act 1955 s 71AA(1AA), Sch 5A para 10(1A) (s 71AA, Sch 5A para 10(1A) as added (see notes 2, 8 supra); s 71AA(1AA) added by the Criminal Justice Act 1991 Sch 9 para 2(c); Army Act 1955 Sch 5A para 10(1A) amended by the Armed Forces Act 1986 s 11(2); the Criminal Justice Act 1991 Sch 9 para 4(b); and by the Armed Forces Act 1991 ss 5(1), (3), 26, Sch 3; Air Force Act 1955 s 71AA(1AA), Sch 5A para 10(1A) (s 71AA, Sch 5A para 10(1A) as added (see notes 2, 8 supra); s 71AA(1AA) added by the Criminal Justice Act 1991 Sch 9 para 2(c); Air Force Act 1955 Sch 5A para 10(1A) amended by the Armed Forces Act 1986 s 11(2); the Criminal Justice Act 1991 Sch 9 para 4(b); and by the Armed Forces Act 1991 s 5(1), (3), Sch 3; Naval Discipline Act 1957 s 43AA(1AA), Sch 4A para 10(1A) (s 43AA, Sch 4A para 10(1A) as added (see notes 2, 8 supra); s 43AA(1AA) added by the Criminal Justice Act 1982 Sch 9 para 6(c); Naval Discipline Act 1957 Sch 4A para 10(1A) amended by the Armed Forces Act 1986 s 11(2); the Criminal Justice Act 1991 Sch 9 para 8(b); and by the Armed Forces Act 1991 s 5(1), (3), Sch 3).

As from a day to be appointed, this provision is applied to any offender of whatever age in respect of whom a custodial order is made: Army Act 1955 s 71AA(1AA), Sch 5A para 10(1A) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 16(b), 18(1), (2)(b), Sch 8); Air Force Act 1955 s 71AA(1AA), Sch 5A para 10(1A) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 23(b), 25(1), (2)(b), Sch 8); Naval Discipline Act 1957 s 43AA(1AA), Sch 4A para 10(1A) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 30(b), 32(1), (2)(b), Sch 8). At the date at which this volume states the law no such day had been appointed.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/E. FURTHER PROVISION AS TO ORDERS/434. Detention, release, and further sentencing of persons subject to custodial orders.

434. Detention, release, and further sentencing of persons subject to custodial orders.

Until a day to be appointed¹, a person in respect of whom a custodial order has been made² must be detained in such institution, being an institution in which a person sentenced to detention in a young offender institution³ could be detained, as the Secretary of State⁴ may direct⁵; as from the appointed day, such a person must be detained in such secure accommodation⁶ as may be determined by the Secretary of State or a person authorised for the purpose⁷. A person who is outside the United Kingdom at the time a custodial order is made in respect of him must as soon as practicable be removed to the United Kingdom⁸.

An offender (other than a civilian offender) in respect of whom a custodial order is made is required to be sentenced also to dismissal from Her Majesty's service with or without disgrace⁹, while a warrant officer or non-commissioned officer¹⁰ so sentenced is required also to be sentenced to reduction to the ranks¹¹, and a rating of or above the rate of leading seaman so sentenced is required to be sentenced to disrating¹².

The statutory provisions relating to the commencement, duration, remission and suspension of sentences of imprisonment¹³, the consecutive running of terms of detention¹⁴ and, in the case of persons (including civilians) subject to naval discipline, the reconsideration of sentences¹⁵, also apply, with appropriate modifications, in the case of a sentence under a custodial order¹⁶, while provisions relating to the limitation of sentences¹⁷ also apply in the case of service offenders (but not civilian offenders)¹⁸. Provision is also made for the post-release supervision of persons in respect of whom custodial orders are made¹⁹.

1 The Army Act 1955 s 71AA(6)(a), Sch 5A para 10(6)(a), the Air Force Act 1955 s 71AA(6)(a), Sch 5A para 10(6)(a), and the Naval Discipline Act 1957 s 43AA(6)(a), Sch 4A para 10(6)(a) (all as added, substituted and amended) are prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 12, 16(c), 18(1), (2)(d), 19, 23(c), 25(1), (2)(d), 26, 30(c), 32(1), (2)(d). At the date at which this volume states the law no such day had been appointed.

2 As to the making of custodial orders see para 433 ante.

3 As to young offender institutions generally see PRISONS vol 36(2) (Reissue) para 643 et seq.

4 As to the Secretary of State see para 2 ante.

5 Army Act 1955 ss 71AA(3), (6)(a), 209(3)(a)(iii), Sch 5A paras 1, 10(4A), (6)(a) (s 71AA added by the Armed Forces Act 1981 s 2(1); Army Act 1955 s 71AA(6)(a) substituted by the Criminal Justice Act 1988 s 123, Sch 8 para 4(a); Army Act 1955 s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 10(4) substituted, and Sch 5A para 10(4A) added, by the Armed Forces Act 1991 s 5(1), (7); Army Act 1955 Sch 5A para 10(6)(a) substituted by the Criminal Justice Act 1988 Sch 8 para 5(a); and amended by the Armed Forces Act 1991 s 5(1), (8)); Air Force Act 1955 ss 71AA(3), (6)(a), 209(3)(a)(iii), Sch 5A paras 1, 10(4A), (6)(a) (s 71AA added by the Armed Forces Act 1981 s 2(1); Air Force Act 1955 s 71AA(6)(a) substituted by the Criminal Justice Act 1988 Sch 8 para 4(a); Air Force Act 1955 s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A para 10(4) substituted, and Sch 5A para 10(4A) added, by the Armed Forces Act 1991 s 5(1), (7); Air Force Act 1955 Sch 5A para 10(6)(a) substituted by the Criminal Justice Act 1988 Sch 8 para 5(a); and amended by the Armed Forces Act 1991 s 5(1), (8)); Naval Discipline Act 1957 ss 43AA(3), (6)(a), 118(3B), Sch 4A paras 1, 10(4A), (6)(a) (s 43AA added by the Armed Forces Act 1981 s 2(2); Naval Discipline Act 1957 s 43AA(6)(a) substituted by the Criminal Justice Act 1988 Sch 8 para 4(b); Naval Discipline Act 1957 s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976

Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A para 10(4) substituted, and Sch 4A para 10(4A) added, by the Armed Forces Act 1991 s 5(1), (7); Naval Discipline Act 1957 Sch 4A para 10(6)(a) substituted by the Criminal Justice Act 1988 Sch 8 para 5(b); and amended by the Armed Forces Act 1991 s 5(1), (8)).

Until a day to be appointed, the Secretary of State has power to direct that such an offender be detained in a prison or remand centre instead of a young offender institution: Army Act 1955 s 71AA(6)(a), Sch 5A para 10(6)(a) (as so added, substituted and amended; and further amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 paras 10, 12); Air Force Act 1955 s 71AA(6)(a), Sch 5A para 10(6)(a) (as so added, substituted and amended; and further amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 paras 15, 17); Naval Discipline Act 1957 s 43AA(6)(a), Sch 4A para 10(6)(a) (as so added, substituted and amended; and further amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 paras 20, 22); Powers of Criminal Courts (Sentencing) Act 2000 s 98 (prospectively repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 182, Sch 8). At the date at which this volume states the law no such day had been appointed.

Any enactment applying to persons detained in any such institution applies also to a person so detained under these provisions: Army Act 1955 s 71AA(3), Sch 5A para 10(4A); Air Force Act 1955 s 71AA(3), Sch 5A para 10(4A); Naval Discipline Act 1957 s 71AA(3), Sch 4A para 10(4A) (all as so added). A custodial order is sufficient authority for the detention of the person subject to it in service custody until he is received into the institution specified in the Secretary of State's direction: Army Act 1955 s 71AA(4), Sch 5A para 10(5); Air Force Act 1955 s 71AA(4), Sch 5A para 10(5); Naval Discipline Act 1957 s 43AA(4), Sch 4A para 10(5) (all as so added).

During the period before a person (including a civilian) subject to military or air force law sentenced under a custodial order is received into the institution where he is to be detained, or for the currency of his sentence if its term ends before he is so received, the statutory provisions relating to the duration of sentences (ie the Army Act 1955 s 119(2), (4), (5) or the Air Force Act 1955 s 119(2), (4), (5) (see para 514 post)), imprisonment and detention rules (ie the Army Act 1955 ss 122, 123 (as amended) or the Air Force Act 1955 ss 122, 123 (as amended) (see para 515 post)), the duties of governors in relation to the receipt of prisoners (ie the Army Act 1955 s 129 (as amended) or the Air Force Act 1955 s 129 (as amended) (see para 515 post)), indemnity for prison officers (ie the Army Act 1955 s 142 or the Air Force Act 1955 s 142), and the arrest of persons unlawfully at large (ie the Army Act 1955 s 190B (as added) or the Air Force Act 1955 s 190B (as added) (see para 65 ante)), are applicable, subject to appropriate modifications, to that person: Army Act 1955 s 71AA(5)(b), Sch 5A para 10(5B) (s 71AA, Sch 5A para 10 as so added; s 71AA(5) substituted by the Armed Forces Act 1986 s 16(1), Sch 1 para 5(2); Army Act 1955 Sch 5A para 10(5A), (5B) added by the Armed Forces Act 1981 s 10, Sch 1 para 3(1), (3); Army Act 1955 Sch 5A para 10(5B) amended by the Armed Forces Act 1986 Sch 1 para 5(4)); Air Force Act 1955 s 71AA(5)(b), Sch 5A para 10(5B) (s 71AA, Sch 5A para 10 as so added; s 71AA(5) substituted by the Armed Forces Act 1986 Sch 1 para 5(2); Air Force Act 1955 Sch 5A para 10(5A), (5B) added by the Armed Forces Act 1981 Sch 1 para 3(1), (3); Air Force Act 1955 Sch 5A para 10(5B) amended by the Armed Forces Act 1986 Sch 1 para 5(4)). During the period before a person (including a civilian) subject to naval discipline sentenced under a custodial order is received into the institution where he is to be detained, or for the currency of his sentence if its term ends before he is so received, the statutory provisions relating to place of detention (ie the Naval Discipline Act 1957 ss 81, 82 (both as amended) (see para 479 post)), compassionate release and unlawful absence (ie ss 87, 88, 104 (s 88 as amended) (see para 476 post)), the application of naval discipline law to detained persons (ie s 119 (see para 306 ante)), and the indemnification of prison officers (ie s 130A (as added)), are applicable, subject to appropriate modifications, to that person: s 43AA(5)(b), Sch 4A para 10(5A)(b) (s 43AA, Sch 4A para 10 as so added; s 43AA(5) substituted by the Armed Forces Act 1986 Sch 1 para 5(5); Naval Discipline Act 1957 Sch 4A para 10(5A) added by the Armed Forces Act 1981 Sch 1 para 3(1), (4); and substituted by the Armed Forces Act 1986 Sch 1 para 5(6)). As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

6 For these purposes, 'secure accommodation' has the same meaning as it has in the Powers of Criminal Courts (Sentencing) Act 2000 s 107 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 1400): Army Act 1955 s 71AA(6)(a), Sch 5A para 10(6)(a) (as added, substituted, amended and prospectively amended: see notes 1, 5 supra); Air Force Act 1955 s 71AA(6)(a), Sch 5A para 10(6)(a) (as added, substituted, amended and prospectively amended: see notes 1, 5 supra); Naval Discipline Act 1957 s 43AA(6)(a), Sch 4A para 10(6)(a) (as added, substituted, amended and prospectively amended: see notes 1, 5 supra).

7 Army Act 1955 s 71AA(3), (6)(a), Sch 5A para 10(4A), (6)(a); Air Force Act 1955 s 71AA(3), (6)(a), Sch 5A para 10(4A), (6)(a); Naval Discipline Act 1957 s 43AA(3), (6)(a), Sch 4A para 10(4A), (6)(a) (all as added, substituted, amended and prospectively amended: see notes 1, 5 supra). Any enactment applying to persons detained in any such institution applies also to a person so detained under these provisions: Army Act 1955 s 71AA(3), Sch 5A para 10(4A); Air Force Act 1955 s 71AA(3), Sch 5A para 10(4A); Naval Discipline Act 1957 s 71AA(3), Sch 4A para 10(4A) (all as added: see note 5 supra).

8 Army Act 1955 s 71AA(2), Sch 5A para 10(4) (as added and substituted (see note 5 supra); s 71AA(2) amended by the Armed Forces Act 1991 Sch 2 para 1, Sch 3); Air Force Act 1955 s 71AA(2), Sch 5A para 10(4) (as added and substituted (see note 5 supra); s 71AA(2) amended by the Armed Forces Act 1991 Sch 2 para 1, Sch 3); Naval Discipline Act 1957 s 43AA(2), Sch 4A para 10(4) (as added and substituted (see note 5 supra)). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

9 Army Act 1955 ss 71(3), 71AA(5)(a) (s 71 substituted by the Armed Forces Act 1971 s 36; Army Act 1955 s 71(3), (4) amended by the Armed Forces Act 1986 s 16(1), Sch 1 para 1(1)(a); Army Act 1955 s 71AA(5) as added and substituted (see note 5 supra)); Air Force Act 1955 ss 71(3), 71AA(5)(a) (s 71 substituted by the Armed Forces Act 1971 s 36; Air Force Act 1955 s 71(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(1)(a); Air Force Act 1955 s 71AA(5) as added and substituted (see note 5 supra)); Naval Discipline Act 1957 ss 43(3), 43AA(5)(a) (s 43 substituted by the Armed Forces Act 1971 s 38; Naval Discipline Act 1957 s 43(3), (4) amended by the Armed Forces Act 1986 Sch 1 para 1(2); Naval Discipline Act 1957 s 43AA(5) as added and substituted (see note 5 supra)). As to dismissal see further para 426 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 s 71(3) proviso (as so substituted), s 71AA(5)(a) (as so added and substituted); Air Force Act 1955 s 71(3) proviso (as so substituted), s 71AA(5)(a) (as so added and substituted); Naval Discipline Act 1957 s 43(3) (as so substituted), s 43AA(5)(a) (as so added and substituted).

The requirement that a person sentenced to imprisonment should also be dismissed from the service does not apply to a person convicted summarily for offences in relation to a service court under the Army Act 1955 s 57(2) (as amended), the Air Force Act 1955 s 57(2) (as amended), or the Naval Discipline Act 1957 s 38(3) (as amended) (see para 411 ante): Army Act 1955 s 71(3) (as so substituted and amended), s 71AA(5) (as so added and substituted); Air Force Act 1955 s 71(3) (as so substituted and amended), s 71AA(5) (as so added and substituted); Naval Discipline Act 1957 s 43(3) (as so substituted and amended), s 43AA(5) (as so added and substituted).

10 As to references to warrant officers and non-commissioned officers see para 336 notes 6, 7 ante.

11 Army Act 1955 s 71(4) (as substituted and amended: see note 9 supra), 71AA(5)(a) (as added and substituted: see note 5 supra); Air Force Act 1955 s 71(4), 71AA(5)(a) (as substituted and amended: see note 9 supra), 71AA(5)(a) (as added and substituted: see note 5 supra). An officer, warrant officer, non-commissioned officer or marine of the marine forces when borne on the books of any of Her Majesty's ships or naval establishments, and a member of Her Majesty's military or air forces who is attached to Her Majesty's naval forces under the Army Act 1955 s 179 (as amended) or the Air Force Act 1955 s 179 (as amended) (see para 309 ante), is also required to be reduced to the ranks, rather than disgraced, in these circumstances: see the Naval Discipline Act 1957 ss 112, 113, Sch 1 para 2, Sch 2 para 5 (s 112 amended by the Armed Forces Act 1971 s 75, Sch 3 para 5(2); Naval Discipline Act 1957 Sch 1 para 2 substituted by the Armed Forces Act 1971 s 43, Sch 1 para 2(6); Naval Discipline Act 1957 Sch 2 para 5 substituted by the Armed Forces Act 1971 Sch 1 para 2(7)). As to Her Majesty's ships see paras 6 note 3, 21 note 13 ante. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Army Act 1955 s 71(4) proviso (as so substituted), s 71AA(5)(a) (as so added and substituted); Air Force Act 1955 s 71(4) proviso (as so substituted), s 71AA(5)(a) (as so added and substituted).

12 Naval Discipline Act 1957 ss 43(4) (as substituted and amended: see note 9 supra), s 43AA(5)(a) (as added and substituted: see note 5 supra). See, however, in connection with officers and marines of the marine forces, and attached members of the army or air force, note 11 supra. Failure by the court to give effect to these requirements does not render the sentence invalid, but the sentence is deemed to include the additional sentence required: Naval Discipline Act 1957 s 43(4) (as so substituted and amended), s 71AA(5)(a) (as so added and substituted). A sentence of disgracing awarded or deemed to have been awarded in compliance with s 43(4) (as substituted and amended) must be one reducing the offender to such rate as may be prescribed in relation to persons of the class to which he belongs by regulations made by the Defence Council: s 43(5). As to the Defence Council see para 2 ante. Regulations made by the Defence Council are not statutory instruments and are not recorded in this work.

13 Ie the Army Act 1955 s 118(1) (as amended), the Air Force Act 1955 s 118(1) (as amended) (see para 514 post), or the Naval Discipline Act 1957 s 85(1) (as amended) (see para 476 post), as the case may be.

14 Ie the Army Act 1955 s 118A(1), (3) (as added), the Air Force Act 1955 s 118A(1), (3) (as added), or the Naval Discipline Act 1957 s 86(1), (3) (s 86(3) as substituted) (see para 440 post), as the case may be.

15 Ie the Naval Discipline Act 1957 s 92(1) (as amended) (see para 476 post).

16 Army Act 1955 s 71AA(5)(a), Sch 5A para 10(5A)(a); Air Force Act 1955 s 71AA(5)(a), Sch 5A para 10(5A)(a); Naval Discipline Act 1957 s 43AA(5)(a), Sch 4A para 10(5A)(a) (all as added and substituted: see note 5 supra).

17 Ie the Army Act 1955 s 119A(3) (as added), the Air Force Act 1955 s 119A(3) (as added), or the Naval Discipline Act 1957 s 89(3) (see para 441 post), as the case may be.

18 Army Act 1955 s 71AA(5)(a); Air Force Act 1955 s 71AA(5)(a); Naval Discipline Act 1957 s 43AA(5)(a) (all as added and substituted: see note 5 supra). In addition, the provisions relating to forfeiture of pay for absence from duty (ie the Army Act 1955 s 145 (as amended) and the Air Force Act 1955 s 145 (as amended) (see para

218 ante)), are applied in the case of service offenders subject to military or air force law: Army Act 1955 s 71AA(5)(a); Air Force Act 1955 s 71AA(5)(a) (both as so added and substituted).

19 See the Army Act 1955 s 71AA(6A), Sch 5A para 10(6A) (s 71AA, Sch 5A para 10 as added (see note 5 supra); s 71AA(6A), Sch 5A para 10(6A) added by the Criminal Justice Act 1982 Sch 8 paras 3(d), 7(e); and amended by virtue of the Criminal Justice Act 1988 Sch 8 paras 1, 2; and by the Criminal Justice Act 1991 Sch 9 paras 2(d), 4(c)), the Air Force Act 1955 s 71AA(6A), Sch 5A para 10(6A) (s 71AA, Sch 5A para 10 as added (see note 5 supra); s 71AA(6A), Sch 5A para 10(6A) added by the Criminal Justice Act 1982 Sch 8 paras 3(d), 7(e); and amended by virtue of the Criminal Justice Act 1988 Sch 8 paras 1, 2; and by the Criminal Justice Act 1991 Sch 9 paras 2(d), 4(c)), and the Naval Discipline Act 1957 s 43AA(6A), Sch 4A para 10(6A) (s 43AA, Sch 4A para 10 as added (see note 5 supra); s 43AA(6A), Sch 4A para 10(6A) added by the Criminal Justice Act 1982 Sch 8 paras 3(d), 7(e); and amended by virtue of the Criminal Justice Act 1988 Sch 8 paras 1, 2; and by the Criminal Justice Act 1991 Sch 9 paras 6(d), 8(c)). These provide that the Criminal Justice Act 1991 s 65 (as amended) (see PRISONS vol 36(2) (Reissue) para 628), which is concerned with the post-release supervision of young offenders, applies to persons released from a term of detention under a custodial order as it applies to a person released from a term of detention under a sentence of detention in a young offender institution.

As from a day to be appointed, the application of s 65 (as amended) to persons released from a term of detention under a custodial order is to be comparable to its application to persons released from a term of detention under a sentence of imprisonment: see the Army Act 1955 s 71AA(6A), Sch 5A para 10(6A) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 12, 18(1), (2)(e)); the Air Force Act 1955 s 71AA(6A), Sch 5A para 10(6A) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 19, 25(1), (2)(e)); and the Naval Discipline Act 1957 s 43AA(6A), Sch 4A para 10(6A) (as so added and amended; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 26, 32(1), (2)(e)).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/E. FURTHER PROVISION AS TO ORDERS/435. Community supervision orders.

435. Community supervision orders.

A community supervision order is an order directing a civilian offender¹ to comply, during a specified period not exceeding three years, with the reasonable requirements of a specified person². The court³ may make such an order where a civilian is found guilty of an offence⁴ and it is of the opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient that he should undergo a period of supervision⁵.

An order may include directions to the offender to comply during the whole or any specified part of the supervision period⁶ with such requirements of any prescribed description as the court, having regard to the circumstances, considers will be beneficial for him⁷. The requirements which may be included in an order are:

- 425 (1) to report in person and to receive visits at his home as directed by the supervisor⁸;
- 426 (2) to notify the supervisor of any change, whether temporary or permanent, in his address or employment⁹;
- 427 (3) to participate in activity of a recreational, educational or cultural nature or of social value as directed by the supervisor¹⁰;
- 428 (4) to reside for a period or periods specified in the order, not exceeding in aggregate 365 days, with a person named in the order who consents in writing to that requirement¹¹;
- 429 (5) to reside for a period or periods specified in the order at a place so specified¹²;
- 430 (6) to submit, for a period or periods specified in the order, to treatment by or under the direction of a duly qualified medical practitioner¹³ named in the order with a view to the improvement of the offender's mental condition¹⁴; and
- 431 (7) to submit, for a period or periods specified in the order, to treatment by or under the direction of a person named in the order having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on drugs or alcohol¹⁵.

An offender aged 17 years or over may additionally be required to comply with one of the following requirements, as the court may direct:

- 432 (a) to perform unpaid work or activity as specified by the supervisor for a fixed number of hours between 40 and 240 as specified in the order¹⁶; or
- 433 (b) to perform unpaid work or activity as specified by the supervisor for the number of hours which the supervisor may from time to time direct, within any limit between 40 and 240 hours in aggregate as specified in the order¹⁷.

A person subject to a community supervision order is guilty of an offence if he fails without reasonable excuse to comply with any requirement included in the order or reasonably imposed by his supervisor¹⁸. If a court-martial under any of the service discipline Acts finds a person guilty of this or any other offence committed during a supervision period, it may deal

with him for the offence for which the community supervision order was made in any manner in which the court which made the order could deal with him if it had just found him guilty of that offence¹⁹.

A person in respect of whom a community supervision order is made is deemed not to have been convicted of the offence for which he has been found guilty²⁰, and a court that makes such an order against any person may not make any other order, except a compensation order²¹, in respect of that person's conviction for that offence²². No appeal lies against a community supervision order²³, but an officer authorised by the Defence Council may discharge an order, or modify it in any way which in his opinion does not increase its severity²⁴.

1 A civilian of any age who is subject to the provisions of the service discipline Acts relating to the punishment of offences (see note 4 *infra*) may be made the subject of a community supervision order: see paras 430, 432 *ante*. As to the service discipline Acts see para 302 *ante*.

2 Army Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 4(1), (2) (s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 4(1) amended by the Armed Forces Act 1996 s 10, Sch 3 para 1(1), (2)); Air Force Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 4(1), (2) (s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A para 4(1) amended by the Armed Forces Act 1996 Sch 3 para 1(1), (2)); Naval Discipline Act 1957 s 118(3B), Sch 4A paras 1, 4(1), (2) (s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A para 4(1) amended by the Armed Forces Act 1996 Sch 3 para 3(1), (2)).

The specified person is a person nominated in the prescribed manner (Army Act 1955 Sch 5A para 4(1); Air Force Act 1955 Sch 5A para 4(1); Naval Discipline Act 1957 Sch 4A para 4(1) (all as so added)); that is to say, in a manner prescribed by regulations under the Army Act 1955 Sch 5A para 17, the Air Force Act 1955 Sch 5A para 17, and the Naval Discipline Act 1957 Act 1955 Sch 4A para 17 (all as added) (see para 430 *ante*) (Army Act 1955 Sch 5A para 2(1); Air Force Act 1955 Sch 5A para 2(1); Naval Discipline Act 1957 Sch 4A para 2(1) (all as so added)). In exercise of this power the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579 have been made. As to the provision made for the nomination, specification and duties of supervisors see regs 4-6. An officer authorised by the Defence Council may replace a supervisor by specifying a new supervisor nominated in the prescribed manner: Army Act 1955 Sch 5A para 4(11)(b); Air Force Act 1955 Sch 5A para 4(11)(b); Naval Discipline Act 1957 Sch 4A para 4(11)(b) (all as so added). Further provision as to the replacement of supervisors is made by the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, reg 12(2)-(4). As to the Defence Council see para 2 *ante*.

A community supervision order must be drawn up in accordance with Form 1 as set out in Sch 2 Pt I, or in a form substantially to the like effect (reg 10), and must be served in accordance with regs 3, 11(b), Sch 2 Pt II para 1. Before making an order, the court must explain to the offender in ordinary language the effect of the order: Army Act 1955 Sch 5A para 4(4)(a); Air Force Act 1955 Sch 5A para 4(4)(a); Naval Discipline Act 1957 Sch 4A para 4(4)(a) (all as so added).

3 I.e., for these purposes, a court-martial: Army Act 1955 Sch 5A para 2(1); Air Force Act 1955 Sch 5A para 2(1); Naval Discipline Act 1957 Sch 4A para 2(1) (all as added: see note 2 *supra*).

4 I.e. an offence under the provisions of the service discipline Acts relating to the punishment of offences (ie the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended)). As to the extent to which, and the manner in which, civilians may be subject to these provisions see the Army Act 1955 s 209 (as amended); the Air Force Act 1955 s 209 (as amended); the Naval Discipline Act 1957 s 118 (as amended); and para 311 *ante*. Note that a community supervision order ceases to have effect if the person in question is dealt with for an offence for which the order was made: Army Act 1955 Sch 5A para 5(5); Air Force Act 1955 Sch 5A para 5(5); Naval Discipline Act 1957 Sch 4A para 5(5) (all as added: see note 2 *supra*).

5 Army Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 2 *supra*); Sch 5A para 4(1) amended by the Armed Forces Act 1986 ss 10(1), 16(2), Sch 2); Air Force Act 1955 Sch 5A para 4(1) (Sch 5A as added (see note 2 *supra*); Sch 5A para 4(1) amended by the Armed Forces Act 1986 s 10(1), Sch 2); Naval Discipline Act 1957 Sch 4A para 4(1) (Sch 4A as added (see note 2 *supra*); Sch 4A para 4(1) amended by the Armed Forces Act 1986 s 10(1), Sch 2).

6 I.e. the period specified in the order: Army Act 1955 Sch 5A paras 2(1), 4(2); Air Force Act 1955 Sch 5A paras 2(1), 4(2); Naval Discipline Act 1957 Sch 4A paras 2(1), 4(2) (all as added: see note 2 *supra*).

7 Army Act 1955 Sch 5A para 4(3); Air Force Act 1955 Sch 5A para 4(3); Naval Discipline Act 1957 Sch 4A para 4(3) (all as added: see note 2 supra). Before making a community supervision order, the court must obtain the offender's consent and, if he is under 17, the consent of his parent or guardian, to the making of the order and to the inclusion in it of any requirement by virtue of the Army Act 1955 Sch 5A para 4(3), the Air Force Act 1955 Sch 5A para 4(3), or the Naval Discipline Act 1957 Sch 4A para 4(3) (all as added), as the case may be, and must explain to the offender (whatever his age) in ordinary language the consequences under these provisions of breach of such a requirement: Army Act 1955 Sch 5A para 4(4); Air Force Act 1955 Sch 5A para 4(4); Naval Discipline Act 1957 Sch 4A para 4(4) (all as so added).

No requirement directed by the court or a supervisor may operate so as to conflict with any religious belief or observance of the person under supervision, or interfere with the times, if any, at which he normally works or attends an educational establishment: Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, reg 8(4).

8 Ibid reg 7, Sch 1 Pt I para 1. 'Supervisor' means a person with whose requirements a community supervision order for the time being requires compliance on the part of the person subject to it: Army Act 1955 Sch 5A paras 2(1), 4(2); Air Force Act 1955 Sch 5A paras 2(1), 4(2); Naval Discipline Act 1957 Sch 4A paras 2(1), 4(2) (all as added: see note 2 supra). As to the nomination, etc, of supervisors see further note 2 supra.

9 Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, Sch 1 Pt I para 2.

10 Ibid Sch 1 Pt I para 3.

11 Ibid Sch 1 Pt I para 4. For the purpose of calculating any period or number of days in respect of a requirement directed by the court or a supervisor, a direction given in respect of one or more parts of a day is treated as given in respect of the whole of that day: reg 9.

12 Ibid Sch 1 Pt I para 5. As to the calculation of periods see note 11 supra.

13 'Duly qualified medical practitioner' means a medical practitioner approved for the purposes of the Mental Health Act 1983 s 12 (as amended): Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, reg 2. As to such practitioners see MENTAL HEALTH vol 30(2) (Reissue) para 482 et seq.

14 Ibid Sch 1 Pt I para 6. The court may not include this requirement in a community supervision order unless it is satisfied, on the evidence of a duly qualified medical practitioner, that the mental condition of the offender is such as requires and may be susceptible to treatment: reg 8(1). As to the calculation of periods see note 11 supra.

15 Ibid Sch 1 Pt I para 7. The court may not include this requirement in a community supervision order unless it is satisfied that the offender is dependent on drugs or alcohol, and his dependency caused or contributed to the offence in respect of which the order is being made and is such as requires and may be susceptible to treatment: reg 8(2). As to the calculation of periods see note 11 supra.

16 Ibid reg 8(3), Sch 1 Pt II para 8.

17 Ibid reg 8(3), Sch 1 Pt II para 9.

18 Army Act 1955 Sch 5A para 4(6); Air Force Act 1955 Sch 5A para 4(6); Naval Discipline Act 1957 Sch 4A para 4(6) (all as added: see note 2 supra). Any such offence is triable by court-martial (Army Act 1955 Sch 5A para 4(6); Air Force Act 1955 Sch 5A para 4(6); Naval Discipline Act 1957 Sch 4A para 4(6) (all as so added)), and is treated as if it were an offence against, as the case may be, the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), or the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended) (Army Act 1955 Sch 5A para 4(7) (as added: see note 2 supra); Air Force Act 1955 Sch 5A para 4(7) (as added: see note 2 supra); Naval Discipline Act 1957 Sch 4A para 4(7) (as added (see note 2 supra); and amended by the Armed Forces Act 1991 s 12(2))). Without prejudice to any other power of arrest, a person found committing such an offence or alleged to have committed or reasonably suspected of having committed any such offence may be arrested by a provost officer, by a warrant officer or non-commissioned officer (in the case of the army and the air force) or any officer or person (in the case of the navy) legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular forces (in the case of the army and the air force) or subject to the Naval Discipline Act 1957 (in the case of the navy): Army Act 1955 Sch 5A para 4(7A) (Sch 5A as added (see note 2 supra); Sch 5A para 4(7A)-(7D) added by the Armed Forces Act 1996 Sch 3 para 1(1), (3)); Air Force Act 1955 Sch 5A para 4(7A) (Sch 5A as added (see note 2 supra); Sch 5A para 4(7A)-(7D) added by the Armed Forces Act 1996 Sch 3 para 1(1), (3)); Naval Discipline Act 1957 Sch 4A para 4(7A) (Sch 4A as added (see note 2 supra); Sch 4A para 4(7A)-(7D) added by the Armed Forces Act 1996 Sch 3 para 2(1), (3)). This power of arrest may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest (Army Act 1955 Sch 5A para 4(7B); Air Force Act 1955 Sch 5A para 4(7B); Naval Discipline Act 1957 Sch 4A para 4(7B) (all as so added)), and a person may not be

arrested under these provisions after the end of a period of six months beginning with the end of the supervision period (Army Act 1955 Sch 5A para 4(7C); Air Force Act 1955 Sch 5A para 4(7C); Naval Discipline Act 1957 Sch 4A para 4(7C) (all as so added)). No proceedings may be taken against a person for an offence under these provisions unless the trial is begun within six months after the end of the supervision period: Army Act 1955 Sch 5A para 4(7D); Air Force Act 1955 Sch 5A para 4(7D); Naval Discipline Act 1957 Sch 4A para 4(7D) (all as so added). For the meaning of 'regular forces' see para 191 ante.

Before making a community supervision order, the court must explain to the offender in ordinary language the consequences under these provisions of breach of any requirement: Army Act 1955 Sch 5A para 4(4)(a); Air Force Act 1955 Sch 5A para 4(4)(a); Naval Discipline Act 1957 Sch 4A para 4(4)(a) (all as so added).

The provisions of the service discipline Acts limiting the time within which proceedings can be brought against a person who has ceased to be subject to service law (ie the Army Act 1955 s 132(2) (as substituted), the Air Force Act 1955 s 132(2) (as substituted) (see para 304 ante), or the Naval Discipline Act 1957 s 52(2) (as amended) (see para 304 ante), as the case may be), do not apply in relation to the offence of failing to comply with any requirement of a community supervision order: Army Act 1955 Sch 5A para 4(7E) (Sch 5A as so added; Sch 5A para 4(7E) added by the Armed Forces Act 2001 s 34, Sch 6 Pt 6 para 52); Air Force Act 1955 Sch 5A para 4(7E) (Sch 5A as so added; Sch 5A para 4(7E) added by the Armed Forces Act 2001 Sch 6 Pt 6 para 52); Naval Discipline Act 1957 Sch 4A para 4(4)(a) (Sch 4A as so added; Sch 4A para 4(4)(a) added by the Armed Forces Act 2001 Sch 6 Pt 6 para 53).

19 Army Act 1955 Sch 5A para 4(8); Air Force Act 1955 Sch 5A para 4(8); Naval Discipline Act 1957 Sch 4A para 4(8) (all as added: see note 2 supra). A standing civilian court has similar powers: see the Army Act 1955 Sch 5A para 4(9); the Air Force Act 1955 Sch 5A para 4(9); and the Naval Discipline Act 1957 Sch 4A para 4(9) (all as so added). As to standing civilian courts see para 520 et seq post. These powers are without prejudice to any power of the court to deal with an offence, whenever committed, other than the offence for which the community supervision order in question was made: Army Act 1955 Sch 5A para 5(6); Air Force Act 1955 Sch 5A para 5(6); Naval Discipline Act 1957 Sch 4A para 5(6) (all as so added). If the court finds a person guilty of the offence of failing without reasonable excuse to comply with any requirement included in a community supervision order or reasonably imposed by his supervisor, it may, instead of dealing with him for the offence for which the order was made, impose upon him a fine not exceeding £1,000: Army Act 1955 Sch 5A para 4(10) (as so added; and amended by the Armed Forces Act 1996 Sch 3 para 1(1), (4)); Air Force Act 1955 Sch 5A para 4(10) (as so added; and amended by the Armed Forces Act 1996 Sch 3 para 1(1), (4)); Naval Discipline Act 1957 Sch 4A para 4(10) (as so added; and amended by the Armed Forces Act 1996 Sch 3 para 2(1), (4)). Before making a community supervision order, the court must explain to the offender in ordinary language the consequences under these provisions of breach of any requirement: Army Act 1955 Sch 5A para 4(4)(a); Air Force Act 1955 Sch 5A para 4(4)(a); Naval Discipline Act 1957 Sch 4A para 4(4)(a) (all as so added).

20 Army Act 1955 Sch 5A para 5(1)(c); Air Force Act 1955 Sch 5A para 5(1)(c); Naval Discipline Act 1957 Sch 4A para 5(1)(c) (all as added: see note 2 supra). This is the case for all purposes except for:

- 128 (1) the purposes of the Army Act 1955 Sch 5A para 4(8) or Sch 5A para 4(9) (as added), the Air Force Act 1955 Sch 5A para 4(8) or Sch 5A para 4(9) (as added), or the Naval Discipline Act 1957 Sch 4A para 4(8) or Sch 4A para 4(9) (as added) (see the text and note 19 supra), as the case may be (Army Act 1955 Sch 5A para 5(1)(i); Air Force Act 1955 Sch 5A para 5(1)(i); Naval Discipline Act 1957 Sch 4A para 5(1)(i) (all as so added));
- 129 (2) the purposes of the proceedings in which the order is made (Army Act 1955 Sch 5A para 5(1)(ii), (2)(a); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(a); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(a) (all as so added));
- 130 (3) any review of those proceedings (Army Act 1955 Sch 5A para 5(1)(ii), (2)(b) (Sch 5A as so added; Sch 5A para 5(2)(b) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(b) (Sch 5A as so added; Sch 5A para 5(2)(b) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(b) (Sch 4A as so added; Sch 4A para 5(2)(b) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II);
- 131 (4) any appeal against conviction in those proceedings (Army Act 1955 Sch 5A para 5(1)(ii), (2)(c); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(c); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(c) (all as so added)); and
- 132 (5) the Rehabilitation of Offenders Act 1974 (Army Act 1955 Sch 5A para 5(1)(ii), (2)(d); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(d); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(d) (all as so added)).

As to the Rehabilitation of Offenders Act 1974 see paras 215-216 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.

These provisions affect neither any right of a person in respect of whom a community supervision order was made to rely on his conviction in bar of any subsequent proceedings for the same offence, nor the restoration of any property in consequence of the conviction: Army Act 1955 Sch 5A para 5(3); Air Force Act 1955 Sch 5A para 5(3); Naval Discipline Act 1957 Sch 4A para 5(3) (all as so added).

21 As to compensation orders see para 436 post.

22 Army Act 1955 Sch 5A para 4(5); Air Force Act 1955 Sch 5A para 4(5); Naval Discipline Act 1957 Sch 4A para 4(5) (all as added: see note 2 supra).

23 Army Act 1955 Sch 5A para 5(4); Air Force Act 1955 Sch 5A para 5(4); Naval Discipline Act 1957 Sch 4A para 5(4) (all as added: see note 2 supra).

24 Army Act 1955 Sch 5A para 4(11)(a); Air Force Act 1955 Sch 5A para 4(11)(a); Naval Discipline Act 1957 Sch 4A para 4(11)(a) (all as added: see note 2 supra). These powers are without prejudice to any of the powers of a reviewing authority: Army Act 1955 Sch 5A para 4(12) (as so added; amended by the Armed Forces Act 1996 Sch 7 Pt II); Air Force Act 1955 Sch 5A para 4(12) (as so added; amended by the Armed Forces Act 1996 Sch 7 Pt II); Naval Discipline Act 1957 Sch 4A para 4(12) (as so added; amended by the Armed Forces Act 1996 Sch 7 Pt II).

Further provision as to the discharge or modification of community supervision orders is made by the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, reg 12(1).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/E. FURTHER PROVISION AS TO ORDERS/436. Compensation orders.

436. Compensation orders.

A compensation order is an order requiring a civilian offender¹ to pay such sum, not exceeding £5,000², as appears to the court³ to be just as or towards compensation for any personal injury, loss or damage⁴ resulting from his offence⁵ or any other offence taken into consideration in determining sentence⁶. The court may make a compensation order on application or otherwise and whether or not it makes any other order⁷, and in making the order must have regard to the offender's means⁸. Provision is made for the suspension of a compensation order pending appeal⁹.

1 A civilian of any age who is subject to the provisions of the service discipline Acts relating to the punishment of offences (see note 5 *infra*) may be made the subject of a compensation order: see paras 430, 432 *ante*. As to the service discipline Acts see para 302 *ante*.

2 Army Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 11(1A), (2) (s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 11(1A) added by the Armed Forces Act 1991 s 9(1)(a), (3); Army Act 1955 Sch 5A para 11(2) amended by the Criminal Justice Act 1991 s 17(3)(a), Sch 4; Air Force Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 11(1A), (2) (s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A para 11(1A) added by the Armed Forces Act 1991 s 9(1)(a), (3); Air Force Act 1955 Sch 5A para 11(2) amended by the Criminal Justice Act 1991 Sch 4; Naval Discipline Act 1957 s 118(3B), Sch 4A paras 1, 11(1A), (2) (s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A para 11(1A) added by the Armed Forces Act 1991 s 9(1)(b), (6)). The Secretary of State may by order either specify a larger sum or provide that these provisions no longer apply, the power to make such an order being exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Army Act 1955 Sch 5A para 11(1A); Air Force Act 1955 Sch 5A para 11(1A); Naval Discipline Act 1957 Sch 4A para 11(1A) (all as so added). At the date at which this volume states the law no such order had been made. As to the Secretary of State see para 2 *ante*.

3 For the meaning of 'the court' see para 435 note 3 *ante*.

4 Army Act 1955 Sch 5A para 11(1) (as added (see note 2 *supra*); and amended by the Armed Forces Act 1991 s 9(1)(a), (2)); Air Force Act 1955 Sch 5A para 11(1) (as added (see note 2 *supra*); and amended by the Armed Forces Act 1991 s 9(1)(a), (2)); Naval Discipline Act 1957 Sch 4A para 11(1) (as added (see note 2 *supra*); and amended by the Armed Forces Act 1991 s 9(1)(b), (2)).

No compensation order may be made in respect of loss suffered by the dependants of a person in consequence of his death: Army Act 1955 Sch 5A para 11(4) (as so added; amended by the Armed Forces Act 1991 ss 9(1)(a), (4), 26, Sch 3); Air Force Act 1955 Sch 5A para 11(4) (as so added; amended by the Armed Forces Act 1991 s 9(1)(a), (4), Sch 3); Naval Discipline Act 1957 Sch 4A para 11(4) (as so added; amended by the Armed Forces Act 1991 s 9(1)(b), (4), Sch 3). A compensation order may only be made in respect of injury, loss or damage which was due to an accident arising out of the presence of a motor vehicle on a road if it is in respect of damage which is treated as resulting from an offence of unlawfully obtaining property (see note 5 *infra*), or it is in respect of injury, loss or damage as respects which the offender is uninsured in relation to the use of the vehicle and compensation is not payable under any arrangements specified by the Secretary of State for these purposes: Army Act 1955 Sch 5A para 11(4A)(a), (b) (Sch 5A as so added; Sch 5A para 11(4A), (4B) added by the Armed Forces Act 1991 s 9(1)(a), (4)); Air Force Act 1955 Sch 5A para 11(4A)(a), (b) (Sch 5A as so added; Sch 5A para 11(4A), (4B) added by the Armed Forces Act 1991 s 9(1)(a), (4)); Naval Discipline Act 1957 Sch 4A para 11(4A)(a), (b) (Sch 4A as so added; Sch 4A para 11(4A), (4B) added by the Armed Forces Act 1991 s 9(1)(b), (4)). Where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident: Army Act 1955 Sch 5A para 11(4A); Air Force Act 1955 Sch 5A para 11(4A); Naval Discipline Act 1957 Sch 4A para 11(4A) (all as so added). For these purposes a person is not uninsured in relation to the use of a vehicle if the vehicle is in the public service of the Crown or the use of the vehicle is exempted from insurance by the Road Traffic Act 1988 s 144 (as amended) (see ROAD

TRAFFIC vol 40(2) (2007 Reissue) para 938): Army Act 1955 Sch 5A para 11(4B); Air Force Act 1955 Sch 5A para 11(4B); Naval Discipline Act 1957 Sch 4A para 11(4B) (all as so added).

5 le an offence under the provisions of the service discipline Acts relating to the punishment of offences (ie the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended)), Pt II (ss 45-92) (as amended)). As to the extent to which, and the manner in which, civilians may be subject to these provisions see the Army Act 1955 s 209 (as amended); the Air Force Act 1955 s 209 (as amended); the Naval Discipline Act 1957 s 118 (as amended); and para 311 ante.

In the case of an offence of unlawfully obtaining property (whether by stealing it, handling it or otherwise), where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is treated for these purposes as having resulted from the offence, however and by whomsoever the damage was caused: Army Act 1955 Sch 5A para 11(3); Air Force Act 1955 Sch 5A para 11(3); Naval Discipline Act 1957 Sch 4A para 11(3) (all as added: see note 2 supra).

6 Army Act 1955 Sch 5A para 11(1); Air Force Act 1955 Sch 5A para 11(1); Naval Discipline Act 1957 Sch 4A para 11(1) (all as added: see note 2 supra). A compensation order made against any person in respect of an offence taken into consideration in determining his sentence ceases to have effect if the offender successfully petitions or appeals against his conviction of the offence or all the offences of which he was convicted in the proceedings in which the order was made: Army Act 1955 Sch 5A para 12(3)(a); Air Force Act 1955 Sch 5A para 12(3)(a); Naval Discipline Act 1957 Sch 4A para 12(3)(a) (all as so added). The offender may petition or appeal against the order as if it were part of the sentence imposed for the offence in respect of which it was made: Army Act 1955 Sch 5A para 12(3)(b); Air Force Act 1955 Sch 5A para 12(3)(b); Naval Discipline Act 1957 Sch 4A para 12(3)(b) (all as so added).

Sums required to be paid in pursuance of compensation orders under the Army Act 1955 or the Air Force Act 1955 are recoverable in the United Kingdom or any colony as debts due to the Crown: Army Act 1955 s 209(4) (substituted by the Armed Forces Act 1976 Sch 9 para 7); Air Force Act 1955 s 209(4) (substituted by the Armed Forces Act 1976 Sch 9 para 7). If a civilian offender ceases to be subject to naval discipline or military or air force law while any such sum remains unsatisfied in whole or in part, a financial penalty enforcement order may be obtainable against him: see the Army Act 1955 s 133A; the Air Force Act 1955 s 133A; the Naval Discipline Act 1957 s 128F (all as added and amended); and para 61 ante. As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante. As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to the meaning of 'colony' see para 20 note 4 ante.

7 Army Act 1955 Sch 5A para 11(1); Air Force Act 1955 Sch 5A para 11(1); Naval Discipline Act 1957 Sch 4A para 11(1) (all as added: see note 2 supra). As to the precedence of compensation orders over fines where both are levied see note 8 infra.

8 Army Act 1955 Sch 5A para 11(5); Air Force Act 1955 Sch 5A para 11(5); Naval Discipline Act 1957 Sch 4A para 11(5) (all as added: see note 2 supra). The court must have regard to the offender's means, so far as they are known to the court, both in determining whether to make the order and in determining the amount to be paid under it (Army Act 1955 Sch 5A para 11(5); Air Force Act 1955 Sch 5A para 11(5); Naval Discipline Act 1957 Sch 4A para 11(5) (all as so added)); where the court considers that it would be appropriate both to impose a fine and to make a compensation order but that the person concerned has insufficient means to pay both an appropriate fine and appropriate compensation, it must give preference to compensation, although it may impose a fine as well: Army Act 1955 Sch 5A para 11(6) (Sch 5A as so added; Sch 5A para 11(6) added by the Armed Forces Act 1991 s 9(1)(a), (5)); Air Force Act 1955 Sch 5A para 11(6) (Sch 5A as so added; Sch 5A para 11(6) added by the Armed Forces Act 1991 s 9(1)(a), (5)); Naval Discipline Act 1957 Sch 4A para 11(6) (Sch 4A as so added; Sch 4A para 11(6) added by the Armed Forces Act 1991 s 9(1)(b), (5)).

9 See the Army Act 1955 Sch 5A para 12(1); the Air Force Act 1955 Sch 5A para 12(1); and the Naval Discipline Act 1957 Sch 4A para 12(1) (all as added: see note 2 supra). These provide that the operation of a compensation order made by a court-martial is suspended in any case until the end of the period specified under the Courts-Martial (Appeals) Act 1968 Pt II (ss 8-38) (as amended) as the period within which an application for leave to appeal must be lodged (see para 532 post), and that if such an application is duly lodged, the order is suspended until either the application is finally refused or it is withdrawn or the appeal is determined or abandoned.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision

in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

436 Compensation orders

TEXT AND NOTES--See now the Armed Forces Act 2006 s 175; and PARA 424A.2.

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/E. FURTHER PROVISION AS TO ORDERS/437. Orders for absolute and conditional discharge.

437. Orders for absolute and conditional discharge.

The court¹ by which a civilian² is found guilty of an offence³ may make an order discharging him either absolutely or, if it thinks fit, conditionally⁴. Where a person is conditionally discharged it must be subject to the condition that during the period of conditional discharge⁵ he commits no offence that may be tried by court-martial under the service discipline Acts⁶ or by a standing civilian court⁷. A person in respect of whom an order for absolute or conditional discharge is made is deemed not to have been convicted of the offence for which he has been found guilty⁸. No appeal lies against such an order⁹.

1 For the meaning of 'the court' see para 435 note 3 ante.

2 A civilian of any age who is subject to the provisions of the service discipline Acts relating to the punishment of offences (see note 3 infra) may be absolutely or conditionally discharged: see paras 430, 432 ante. As to the service discipline Acts see para 302 ante.

3 I.e. an offence under the provisions of the service discipline Acts relating to the punishment of offences (ie the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended)). As to the extent to which, and the manner in which, civilians may be subject to these provisions see the Army Act 1955 s 209 (as amended); the Air Force Act 1955 s 209 (as amended); the Naval Discipline Act 1957 s 118 (as amended); and para 311 ante.

An order for absolute or conditional discharge may not be made in respect of an offence the sentence for which is fixed by law or which is a second serious offence or a third class A drug trafficking or burglary offence the sentence for which, by virtue of the Army Act 1955 s 70(3A), the Air Force Act 1955 s 70(3A), or the Naval Discipline Act 1957 s 42(1A) (all as added and amended) (see para 422 ante), falls to be imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 109(2) (as amended), s 110(2) (as amended) or s 111(2) (as amended), as the case may be (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): Army Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 3(1) (s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 3(1) amended by the Crime (Sentences) Act 1997 s 55, Sch 4 para 1(4)); Air Force Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 3(1) (s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A para 3(1) amended by the Crime (Sentences) Act 1997 Sch 4 para 2(4)); Naval Discipline Act 1957 s 118(3B), Sch 4A paras 1, 3(1) (s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A para 3(1) amended by the Crime (Sentences) Act 1997 Sch 4 para 3(4)).

As from a day to be appointed, this exclusion is removed and it is instead provided that an order for absolute or conditional discharge may not be made:

(1) if the offence of which the civilian is found guilty is an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70, or the Naval Discipline Act 1957 s 42 (all as amended) (see para 422 ante), as the case may be, where the corresponding civil offence is one for which the sentence is fixed by law; or

(2) if the civilian is a person to whom the Army Act 1955 s 70(3B), (3E) or (3G), the Air Force Act 1955 s 70(3B), (3E) or (3G), or the Naval Discipline Act 1957 s 42(1B), (1E) or (1G) (all as prospectively added) (see para 422 ante), as the case may be, applies and the court-martial is not of the opinion mentioned in those provisions: Army Act 1955 Sch 5A para 3(1), (1A) (as so added and amended; Sch 5A para 3(1) prospectively amended, and Sch 5A para 3(1A) prospectively added, by the Armed Forces Act 2001 s 22(1), Sch 3 para 4); Air Force Act 1955 Sch 5A para 3(1), (1A) (as so added and amended; Sch 5A para 3(1) prospectively amended, and Sch 5A para 3(1A) prospectively added, by the Armed Forces Act 2001 Sch 3 para 4); Naval Discipline Act 1957 Sch 4A para 3(1), (1A) (as so added and amended; Sch 4A para 3(1) prospectively amended, and Sch 5A para 3(1A) prospectively added, by the Armed Forces Act 2001 Sch 3 para 7). At the date at which this volume states the law no such day had been appointed.

Note that an order for conditional discharge ceases to have effect if the person in question is dealt with for an offence for which the order was made: Army Act 1955 Sch 5A para 5(5); Air Force Act 1955 Sch 5A para 5(5); Naval Discipline Act 1957 Sch 4A para 5(5) (all as so added).

4 Army Act 1955 Sch 5A para 3(1); Air Force Act 1955 Sch 5A para 3(1); Naval Discipline Act 1957 Sch 4A para 3(1) (all as added: see note 3 supra).

5 In such period not exceeding three years from the date of the order for conditional discharge (ie the order discharging the person subject to a condition), as may be specified in that order: Army Act 1955 Sch 5A paras 2(1), 3(1); Air Force Act 1955 Sch 5A paras 2(1), 3(1); Naval Discipline Act 1957 Sch 4A paras 2(1), 3(1) (all as added: see note 3 supra).

6 As to the service discipline Acts see para 302 ante.

7 Army Act 1955 Sch 5A para 3(1); Air Force Act 1955 Sch 5A para 3(1); Naval Discipline Act 1957 Sch 4A para 3(1) (all as added: see note 3 supra). As to the powers of a standing civilian court see para 520 et seq post. Before making an order for conditional discharge; the court must explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence (Army Act 1955 Sch 5A para 3(4); Air Force Act 1955 Sch 5A para 3(4); Naval Discipline Act 1957 Sch 4A para 3(4) (all as so added)); and if a court-martial or standing civilian court finds a person in whose case an order for conditional discharge has been made guilty of an offence committed during that period, it may deal with him for the offence for which the order was made in any manner in which the court which made the order (or, in the case of a standing civilian court, that court) could deal with him if it had just found him guilty of that offence (Army Act 1955 Sch 5A para 3(2), (3); Air Force Act 1955 Sch 5A para 3(2), (3); Naval Discipline Act 1957 Sch 4A para 3(2), (3) (all as so added)). These powers are without prejudice to any power of the court to deal with an offence, whenever committed, other than the offence for which the order for conditional discharge in question was made: Army Act 1955 Sch 5A para 5(6); Air Force Act 1955 Sch 5A para 5(6); Naval Discipline Act 1957 Sch 4A para 5(6) (all as so added).

8 Army Act 1955 Sch 5A para 5(1)(a), (b); Air Force Act 1955 Sch 5A para 5(1)(a), (b); Naval Discipline Act 1957 Sch 4A para 5(1)(a), (b) (all as added: see note 3 supra). This is the case for all purposes except for:

- 133 (1) the purposes of the Army Act 1955 Sch 5A para 3(2) or Sch 5A para 3(3) (as added), the Army Act 1955 Sch 5A para 3(2) or Sch 5A para 3(3) (as added), or the Naval Discipline Act 1957 Sch 4A para 3(2) or Sch 4A para 3(3) (as added) (see the text and note 7 supra), as the case may be (Army Act 1955 Sch 5A para 5(1)(i); Air Force Act 1955 Sch 5A para 5(1)(i); Naval Discipline Act 1957 Sch 4A para 5(1)(i) (all as so added));
- 134 (2) the purposes of the proceedings in which the order is made (Army Act 1955 Sch 5A para 5(1)(ii), (2)(a); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(a); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(a) (all as so added));
- 135 (3) any review of those proceedings (Army Act 1955 Sch 5A para 5(1)(ii), (2)(b) (as so added; Sch 5A para 5(2)(b) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(b) (as so added; Sch 5A para 5(2)(b) amended by the Armed Forces Act 1996 Sch 7 Pt II); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(b) (as so added; Sch 4A para 5(2)(b) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II);
- 136 (4) any appeal against conviction in those proceedings (Army Act 1955 Sch 5A para 5(1)(ii), (2)(c); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(c); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(c) (all as so added)); and
- 137 (5) the Rehabilitation of Offenders Act 1974 (Army Act 1955 Sch 5A para 5(1)(ii), (2)(d); Air Force Act 1955 Sch 5A para 5(1)(ii), (2)(d); Naval Discipline Act 1957 Sch 4A para 5(1)(ii), (2)(d) (all as so added)).

As to the Rehabilitation of Offenders Act 1974 see paras 215-216 ante; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.

These provisions affect neither any right of a person in respect of whom an order for absolute or conditional discharge was made to rely on his conviction in bar of any subsequent proceedings for the same offence, nor the restoration of any property in consequence of the conviction: Army Act 1955 Sch 5A para 5(3); Air Force Act 1955 Sch 5A para 5(3); Naval Discipline Act 1957 Sch 4A para 5(3) (all as so added).

9 Army Act 1955 Sch 5A para 5(4); Air Force Act 1955 Sch 5A para 5(4); Naval Discipline Act 1957 Sch 4A para 5(4) (all as added: see note 3 supra).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

437 Orders for absolute and conditional discharge

TEXT AND NOTES--See now the Armed Forces Act 2006 ss 185-187.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/E. FURTHER PROVISION AS TO ORDERS/438. Orders binding over an offender's parents.

438. Orders binding over an offender's parents.

An order binding over the parents of a civilian offender aged under 17¹ who has been found guilty of an offence² may either require the offender's parents to pay any fine or compensation order which the court is minded to impose³ or require the parents to enter into a recognisance to exercise proper control over the offender⁴.

In the former case, where the court is of the opinion that the offender's case would best be met, whether or not in conjunction with any other punishment, by the exercise of any power to impose a fine in respect of the offence, or to make a compensation order in respect of the offence or of any other offence taken into consideration in determining sentence, it must order that the fine or compensation awarded be paid by any parent or guardian of his who is a service parent or guardian⁵, instead of by the person himself⁶. A parent or guardian on or against whom a fine has been imposed or compensation order made under these powers may petition or appeal against the sentence⁷.

In the latter case, the court may make an order requiring any parent or guardian of the offender who is a service parent or guardian to enter into a recognisance to exercise proper control over him⁸, such recognisance (or part of it) to be declared forfeit⁹ if the offender is found guilty¹⁰ of any offence committed within the specified period¹¹. No appeal lies from such an order or from a declaration of forfeiture¹².

1 For the scale of punishments and orders that may be imposed on a civilian offender aged under 17 see para 432 ante.

2 I.e. an offence under the provisions of the service discipline Acts relating to the punishment of offences (ie the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended), and the Naval Discipline Act 1957 Pt I (ss 1-43B) (as amended), Pt II (ss 45-92) (as amended)). As to the extent to which, and the manner in which, civilians may be subject to these provisions see the Army Act 1955 s 209 (as amended); the Air Force Act 1955 s 209 (as amended); the Naval Discipline Act 1957 s 118 (as amended); and para 311 ante.

3 For the meaning of 'the court' see para 435 note 3 ante. For the power of the court to impose fines and compensation orders on civilian young offenders see paras 432, 436 ante.

4 See the Army Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 13(1), 14(1) (s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 13(1), (2) substituted by the Criminal Justice Act 1982 s 58, Sch 8 para 9; Army Act 1955 Sch 5A para 13(1)(a), (b) substituted by the Armed Forces Act 1986 s 16(1), Sch 1 para 11); the Air Force Act 1955 s 209(3)(a)(iii), Sch 5A paras 1, 13(1), 14(1) (s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 para 1; Air Force Act 1955 Sch 5A para 13(1), (2) substituted by the Criminal Justice Act 1982 Sch 8 para 9; Air Force Act 1955 Sch 5A para 13(1)(a), (b) substituted by the Armed Forces Act 1986 Sch 1 para 11); Naval Discipline Act 1957 s 118(3B), Sch 4A paras 1, 13(1), 14(1) (s 118(3B) added by the Armed Forces Act 1976 Sch 9 para 10; Naval Discipline Act 1957 Sch 4A added by the Armed Forces Act 1976 Sch 4 paras 1, 3; Naval Discipline Act 1957 Sch 4A para 13(1), (2) substituted by the Armed Forces Act 1986 Sch 1 para 12(1), (2)).

5 A parent or guardian is a service parent or guardian for these purposes if he is subject to service law or is a civilian in respect of whom the Army Act 1955 Pt II (as amended), the Air Force Act 1955 Pt II (as amended), or the Naval Discipline Act 1957 Pts I, II (as amended) are applied by virtue of the Army Act 1955 s 209 (as amended), the Air Force Act 1955 s 209 (as amended), or the Naval Discipline Act 1957 s 118 (as amended), as the case may be: Army Act 1955 Sch 5A para 2(2); Air Force Act 1955 Sch 5A para 2(2); Naval Discipline Act 1957 Sch 4A para 2(2) (all as added: see note 4 supra).

For the purposes of an order requiring the payment of any fine or compensation on behalf of an offender who is subject to naval discipline, 'guardian' includes any individual who, in the court's opinion, had at the time of the offence care or control of the offender (Naval Discipline Act 1957 Sch 4A para 13(5) (Sch 4A as so added; and Sch 4A para 13(5) added by the Armed Forces Act 1981 Sch 1 para 3(1), (8))); and for the purposes of an order requiring the entering into of a recognisance to exercise proper control over an offender (whether subject to naval discipline or to military or air force law), it includes any individual who, in the court's opinion, has control of the offender (Army Act 1955 Sch 5A para 14(9) (Sch 5A as so added; Sch 5A para 14(9) added by the Armed Forces Act 1981 Sch 1 para 3(1), (9)); Air Force Act 1955 Sch 5A para 14(9) (Sch 5A as so added; Sch 5A para 14(9) added by the Armed Forces Act 1981 Sch 1 para 3(1), (9)); Naval Discipline Act 1957 Sch 4A para 14(9) (Sch 4A as so added; Sch 4A para 14(9) added by the Armed Forces Act 1981 Sch 1 para 3(1), (9))). As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

6 Army Act 1955 Sch 5A para 13(1)(b); Air Force Act 1955 Sch 5A para 13(1)(b); Naval Discipline Act 1957 Sch 4A para 13(1)(b) (all as added and substituted: see note 4 supra). Such an order is obligatory unless the court is satisfied either that the parent or guardian cannot be found (Army Act 1955 Sch 5A para 13(1)(i); Air Force Act 1955 Sch 5A para 13(1)(i); Naval Discipline Act 1957 Sch 4A para 13(1)(i) (all as so added and substituted)) or that, having regard to the circumstances of the case, it would be unreasonable to make an order for payment (Army Act 1955 Sch 5A para 13(1)(ii); Air Force Act 1955 Sch 5A para 13(1)(ii); Naval Discipline Act 1957 Sch 4A para 13(1)(ii) (all as so added and substituted)). No such order may be made without giving the parent or guardian an opportunity of being heard, unless the parent or guardian in question has been required to attend in the manner prescribed by rules under the Army Act 1955 s 103 (as amended), the Air Force Act 1955 s 103 (as amended) (see para 498 post), or the Naval Discipline Act 1957 s 58 (as amended) (see para 448 post), as the case may be, or, in the case of proceedings under military or air force law, by order under the Armed Forces Act 1967 Sch 3 para 12 (as amended) and has failed to do so: Army Act 1955 Sch 5A para 13(2) (as so added and substituted; and amended by the Armed Forces Act 1996 s 5, Sch 1 paras 66, 75); Air Force Act 1955 Sch 5A para 13(2) (as so added and substituted; and amended by the Armed Forces Act 1996 Sch 1 paras 76, 85); Naval Discipline Act 1957 Sch 4A para 13(2) (as so added and substituted; and amended by the Armed Forces Act 1996 Sch 1 paras 86, 98). An order requiring the payment of a fine or compensation by a parent or guardian must be drawn up in accordance with Form 3 as set out in the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, Sch 2 Pt I, or in a form substantially to the like effect (reg 10); and it must be served in accordance with regs 3, 11, Sch 2 Pt II paras 3, 4. For the power to make such regulations see paras 430, 432 ante.

If a parent or guardian against whom a fine is so imposed or an order so made is a member of the regular forces or air force or is subject to the Naval Discipline Act 1957, any sum which he is liable to pay, in so far as not otherwise paid by him, may be deducted from his pay: Army Act 1955 Sch 5A para 13(4); Air Force Act 1955 Sch 5A para 13(4); Naval Discipline Act 1957 Sch 4A para 13(4) (all as so added). For the meaning of 'regular forces' see para 191 ante.

7 Army Act 1955 Sch 5A para 13(3) (as added (see note 4 supra); substituted by the Armed Forces Act 1981 s 10, Sch 1 para 3(1), (6)); Air Force Act 1955 Sch 5A para 13(3) (as added (see note 4 supra); substituted by the Armed Forces Act 1981 Sch 1 para 3(1), (6)); Naval Discipline Act 1957 Sch 4A para 13(3) (as added (see note 4 supra); substituted by the Armed Forces Act 1981 Sch 1 para 3(1), (7)). The parent or guardian may present a petition in accordance with the Army Act 1955 s 113 (as substituted and amended), the Air Force Act 1955 s 113 (as substituted and amended) or the Naval Discipline Act 1957 s 70(1) (as substituted and amended), as the case may be (see paras 473, 511 post) against sentence, or may appeal against sentence in accordance with the Courts-Martial (Appeals) Act 1968 s 8 (as amended) (see para 473 post) as if he had been convicted of and sentenced for the offence by the court-martial: Army Act 1955 Sch 5A para 13(3) (as so added and substituted; and amended by the Armed Forces Act 1996 s 35(1), Sch 6 para 7); Air Force Act 1955 Sch 5A para 13(3) (as so added and substituted; and amended by the Armed Forces Act 1981 Sch 6 para 7); Naval Discipline Act 1957 Sch 4A para 13(3) (as so added and substituted; and amended by the Armed Forces Act 1996 Sch 6 para 8).

8 Army Act 1955 Sch 5A para 14(1); Air Force Act 1955 Sch 5A para 14(1); Naval Discipline Act 1957 Sch 4A para 14(1) (all as added: see note 4 supra). The recognisance must be for an amount not exceeding £1,000 and for a period not exceeding one year: Army Act 1955 Sch 5A para 14(1); Air Force Act 1955 Sch 5A para 14(1); Naval Discipline Act 1957 Sch 4A para 14(1) (all as so added; and all amended by the Criminal Penalties (Increase, etc) Order 1984, SI 1984/447, art 2(1), Sch 1). This power is not exercisable unless the parent or guardian consents: Army Act 1955 Sch 5A para 14(2); Air Force Act 1955 Sch 5A para 14(2); Naval Discipline Act 1957 Sch 4A para 14(2) (all as so added). An order of recognisance must be drawn up in accordance with Form 4 as set out in the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, Sch 2 Pt I, or in a form substantially to the like effect (reg 10); and it must be served in accordance with regs 3, 11(b), Sch 2 Pt II para 5.

9 Forfeiture is declared in the prescribed manner (Army Act 1955 Sch 5A para 14(4); Air Force Act 1955 Sch 5A para 14(4); Naval Discipline Act 1957 Sch 4A para 14(4) (all as added: see note 4 supra)); that is to say, in a manner prescribed by regulations under the Army Act 1955 Sch 5A para 17, the Air Force Act 1955 Sch 5A para 17, and the Naval Discipline Act 1957 Act 1955 Sch 4A para 17 (all as so added) (see paras 430, 432 ante)

(Army Act 1955 Sch 5A para 2(1); Air Force Act 1955 Sch 5A para 2(1); Naval Discipline Act 1957 Sch 4A para 2(1) (all as so added)). In exercise of this power the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, have been made. The regulations provide that an order declaring forfeiture of recognisance must be drawn up in accordance with Form 5 as set out in Sch 2 Pt I, or in a form substantially to the like effect (reg 10), and must be served in accordance with regs 3, 11(b), Sch 2 Pt II para 6. Before making an order for recognisance the court must explain to the parent or guardian of the offender in ordinary language that this is the effect of the order: Army Act 1955 Sch 5A para 14(3); Air Force Act 1955 Sch 5A para 14(3); Naval Discipline Act 1957 Act 1955 Sch 4A para 14(3) (all as so added).

Forfeiture may only be declared against a person who is a service parent or guardian when it is made: Army Act 1955 Sch 5A para 14(5); Air Force Act 1955 Sch 5A para 14(5); Naval Discipline Act 1957 Act 1955 Sch 4A para 14(5) (all as so added). No declaration may be made without giving the parent or guardian an opportunity of being heard, unless the parent or guardian in question has been required to attend in the manner prescribed by rules under the Army Act 1955 s 103 (as amended) (see para 498 post), the Air Force Act 1955 s 103 (as amended) (see para 498 post), or the Naval Discipline Act 1957 s 58 (as amended) (see para 448 post), as the case may be or, in the case of proceedings under military or air force law, by order under the Armed Forces Act 1967 Sch 3 para 12 (as amended) and has failed to do so: Army Act 1955 Sch 5A para 14(6) (as so added; and amended by the Armed Forces Act 1996 Sch 1 paras 66, 75); Air Force Act 1955 Sch 5A para 14(6) (as so added; and amended by the Armed Forces Act 1996 Sch 1 paras 76, 85); Naval Discipline Act 1957 Sch 4A para 14(6) (as so added; and amended by the Armed Forces Act 1996 Sch 1 paras 86, 98). Where a recognisance is declared forfeit the person bound by it is adjudged to pay the sum in which he is bound or any lesser sum (Army Act 1955 Sch 5A para 14(4); Air Force Act 1955 Sch 5A para 14(4); Naval Discipline Act 1957 Act 1955 Sch 4A para 14(4) (all as so added)), such payment being enforceable as if it were a fine imposed for an offence against the Army Act 1955 s 70 (as amended), the Air Force Act 1955 s 70 (as amended) or the Naval Discipline Act 1957 s 42 (as amended) (see para 422 ante) (Army Act 1955 Sch 5A para 14(7); Air Force Act 1955 Sch 5A para 14(7); Naval Discipline Act 1957 Act 1955 Sch 4A para 14(7) (all as so added)).

10 le by court-martial under any of the service discipline Acts or by a standing civilian court: Army Act 1955 Sch 5A para 14(4); Air Force Act 1955 Sch 5A para 14(4); Naval Discipline Act 1957 Sch 4A para 14(4) (all as added: see note 4 supra). As to the service discipline Acts see para 302 ante. As to the standing civilian court see para 520 et seq post.

11 Army Act 1955 Sch 5A para 14(4); Air Force Act 1955 Sch 5A para 14(4); Naval Discipline Act 1957 Sch 4A para 14(4) (all as added: see note 4 supra). This power is without prejudice to any power of the court to punish the offender or to make any other order against him or an order requiring his parent or guardian to pay any fine or compensation on his behalf or to enter into a recognisance: Army Act 1955 Sch 5A para 14(4); Air Force Act 1955 Sch 5A para 14(4); Naval Discipline Act 1957 Sch 4A para 14(4) (all as so added).

12 Army Act 1955 Sch 5A para 14(8); Air Force Act 1955 Sch 5A para 14(8); Naval Discipline Act 1957 Sch 4A para 14(8) (all as added: see note 4 supra).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

438 Orders binding over an offender's parents

TEXT AND NOTES--As to orders for parents or guardians to enter into recognizance, see now the Armed Forces Act 2006 ss 233-236.

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F. MISCELLANEOUS

439. Award of imprisonment in default of payment of fines.

Where a court-martial imposes a fine¹ on a person found guilty of an offence, and that person is on the same occasion sentenced to imprisonment or ordered to be detained² for the same or another offence, or is already serving or otherwise liable to serve a term of imprisonment or detention, the court may make an order fixing a further consecutive term of imprisonment or detention to be undergone if any part of the fine is not duly paid or recovered³ on or before the date on which the offender would otherwise be released⁴. Such an order ceases to have effect if the whole amount of the fine is paid or recovered in the prescribed manner⁵, and the person subject to it must be released unless he is in custody for some other cause⁶; where part only of the outstanding sum is paid or recovered, the period of the further term of detention is correspondingly reduced⁷.

1 As to the imposition fines by courts-martial see paras 424, 429-430, 432 ante.

2 In pursuance of a custodial order made under the Army Act 1955 s 71AA (as added and amended), the Air Force Act 1955 s 71AA (as added and amended) or the Naval Discipline Act 1957 s 43AA (as added and amended), as the case may be: see para 433 ante. A custodial order made in respect of a civilian young offender (see paras 432-433 ante) is not within the scope of these provisions.

3 For these purposes, references to the due recovery of any amount include references to deductions from pay under the provisions of the Army Act 1955 Pt III (ss 144-153) (as amended), the Air Force Act 1955 Pt III (ss 144-153) (as amended), or the Naval Discipline Act 1957 Pt IV (ss 111-139) (as amended), as the case may be (see paras 76, 218 ante), but do not include references to amounts forfeited under those provisions: see the Army Act 1955 s 71B(6) (s 71B added by the Armed Forces Act 1976 s 13, Sch 6 para 1); the Air Force Act 1955 s 71B(6) (s 71B added by the Armed Forces Act 1976 Sch 6 para 1); and the Naval Discipline Act 1957 s 43B(6) (s 43B added by the Armed Forces Act 1976 Sch 6 paras 1, 2).

4 Army Act 1955 s 71B(1) (s 71B as added (see note 3 supra); s 71B(1) amended by the Criminal Justice Act 1982 s 58, Sch 8 para 4(1)(a), (b)(i); and by the Armed Forces Act 1986 s 16(2), Sch 2), the Air Force Act 1955 s 71B(1) (s 71B as added (see note 3 supra); s 71B(1) amended by the Criminal Justice Act 1982 Sch 8 para 4(1)(a), (b)(i); and by the Armed Forces Act 1986 Sch 2); Naval Discipline Act 1957 s 43B(1) (s 43B as added (see note 3 supra); s 43B(1) amended by the Criminal Justice Act 1982 Sch 8 para 4(1)(a), (b)(i), (2); and by the Armed Forces Act 1986 Sch 2). The maximum periods of further imprisonment or detention which may be imposed under these powers are: 7 days (where the outstanding amount does not exceed £200); 14 days (where the outstanding amount exceeds £200 but does not exceed £500); 28 days (where the outstanding amount exceeds £500 but does not exceed £1,000); 45 days (where the outstanding amount exceeds £1,000 but does not exceed £2,500); 3 months (where the outstanding amount exceeds £2,500 but does not exceed £5,000); 6 months (where the outstanding amount exceeds £5,000 but does not exceed £10,000); 12 months (where the outstanding amount exceeds £10,000 but does not exceed £20,000); 18 months (where the outstanding amount exceeds £20,000 but does not exceed £50,000); 2 years (where the outstanding amount exceeds £50,000 but does not exceed £100,000); 3 years (where the outstanding amount exceeds £100,000 but does not exceed £250,000); 5 years (where the outstanding amount exceeds £250,000 but does not exceed £1,000,000); and 10 years (where the outstanding amount exceeds £1,000,000): see the Army Act 1955 s 71B(2) (s 71B as so added; s 71B(2) substituted by the Armed Forces Act 1986 s 5; and amended by the Armed Forces Act 1991 s 26(1), Sch 2 para 2; and by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 11); the Air Force Act 1955 s 71B(2) (s 71B as so added; s 71B(2) substituted by the Armed Forces Act 1986 s 5; and amended by the Armed Forces Act 1991 Sch 2 para 2; and by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 16); the Naval Discipline Act 1957 s 43B(2) (s 43B as so added; s 43B(2) substituted by the Armed Forces Act 1986 s 5; and amended by the Armed Forces Act 1991 Sch 2 para 2; and by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 21); and the Powers of Criminal Courts (Sentencing) Act 2000 s 139(4).

An order imposing a term of detention under these provisions must be given effect as if it were a custodial order under the Army Act 1955 s 71AA (as added and amended), the Air Force Act 1955 s 71AA (as added and amended) or the Naval Discipline Act 1957 s 43AA (as added and amended) (see paras 433-434 ante), as the case may be: Army Act 1955 s 71B(5A) (s 71B as so added; s 71B(5A) added by the Criminal Justice Act 1982 Sch 8 para 4(1)(c)); Air Force Act 1955 s 71B(5A) (s 71B as so added; s 71B(5A) added by the Criminal Justice Act 1982 Sch 8 para 4(1)(c)); Naval Discipline Act 1957 s 43B(5A) (s 43B as so added; s 43B(5A) added by the Criminal Justice Act 1982 Sch 8 para 4(1)(c), (2)).

5 For the prescribed manner in which a fine is to be paid or recovered for these purposes in respect of persons subject to military or air force law see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 88; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/170, r 88. At the date at which this volume states the law no corresponding provision had been made in respect of persons subject to naval discipline. As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

6 Army Act 1955 s 71B(3); Air Force Act 1955 s 71B(3); Naval Discipline Act 1957 s 43B(3) (all as added: see note 3 supra).

7 Army Act 1955 s 71B(4) (s 71B as added (see note 3 supra); s 71B(4) amended by the Criminal Justice Act 1982 s 58, Sch 8 para 4(1)(b)(ii); Air Force Act 1955 s 71B(4) (s 71B as added (see note 3 supra); s 71B(4) amended by the Criminal Justice Act 1982 Sch 8 para 4(1)(b)(ii); Naval Discipline Act 1957 s 43B(4) (s 43B as added (see note 3 supra); s 43B(4) amended by the Criminal Justice Act 1982 Sch 8 para 4(1)(b)(ii), (2)). The period of the further term of detention is reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid or recovered bears to the amount of the fine: Army Act 1955 s 71B(4); Air Force Act 1955 s 71B(4); Naval Discipline Act 1957 s 43B(4) (all as so added and amended). In calculating this reduction, any fraction of a day is left out of account: Army Act 1955 s 71B(5); Air Force Act 1955 s 71B(5); Naval Discipline Act 1957 s 43B(5) (all as so added).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/F. MISCELLANEOUS/440. Consecutive sentences of imprisonment or detention.

440. Consecutive sentences of imprisonment or detention.

Where any person subject to naval discipline, military law or air force law¹ who is serving a sentence of imprisonment, whether passed under one of the service discipline Acts² or otherwise, or of detention passed under one or other of those Acts, is awarded under service law a sentence of the same type³ as that which he is already serving, the subsequent sentence of imprisonment or detention may be ordered to begin to run from the expiry of the first-mentioned sentence⁴. A like order may be made where a person who is awarded a sentence of imprisonment or detention under service law is further awarded summarily⁵ a sentence of the same type as a punishment for conduct in the nature of contempt of a court-martial⁶.

Where a person is convicted by a court-martial under the Naval Discipline Act 1957, or by a general court-martial or field general court-martial under military or air force law, of two or more civil offences⁷ consisting in the commission of an offence for which a civil court⁸ in England could award a term of imprisonment, the court-martial may by its sentence award, for any of the offences of which the offender is convicted, a term of imprisonment to run from the expiry of a term awarded by that court for any other of those offences⁹.

The provisions relating to the running of consecutive terms of imprisonment or detention apply also to consecutive custodial orders, whether made in respect of service personnel or civilians¹⁰.

1 As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

2 As to the service discipline Acts see para 302 ante.

3 Ie treating imprisonment as one type of punishment and detention as another for these purposes.

4 Army Act 1955 s 118A(1), (2) (s 118A added by the Armed Forces Act 1971 s 39(1)); Air Force Act 1955 s 118A(1), (2) (s 118A added by the Armed Forces Act 1971 s 39(1), (2)); Naval Discipline Act 1957 s 86(1), (2). The power to award a sentence of imprisonment to run consecutively to one already being served by a person subject to military or air force law cannot be exercised by a standing civilian court (although of the Armed Forces Act 1976 s 8(2); and para 524 post), or by an appropriate superior authority or commanding officer, neither of whom has any power to award a sentence of imprisonment; nor can the power to award a sentence of detention to run consecutively to one already being served be exercised by a standing civilian court or by an appropriate superior authority (neither of which has any power to award detention), although it can be exercised by a commanding officer, as well as by a court-martial: see the Army Act 1955 s 118A(2) (as so added); and the Air Force Act 1955 s 118A(2) (as so added). For appeals from commanding officers to the summary appeal court see para 358 ante.

Any order made under the Army Act 1955 s 118A(2) (as added), the Air Force Act 1955 s 118A(2) (as added) or the Naval Discipline Act 1957 s 86(2) must take into account the provision limiting to two years the total period for which an offender can be kept continuously in detention (see further para 441 post). As to the effect of awarding imprisonment to an offender already undergoing detention see para 441 post. The number of consecutive days of detention which may be served in the aggregate under two or more summary awards of detention is limited: see the Manual of Naval Law vol I para 2534; the Queen's Regulations for the Army 1975 para 6.077; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 15 para 1071. The army award individual sentences of detention and the commanding officer has no power to order that they be served consecutively: see para 355 ante.

As to the commencement and running of sentences see para 514 post. Where on awarding a sentence of detention an offender's commanding officer orders that it is to begin to run from the expiry of another sentence, the offender may elect for the subsequent sentence to begin to run from the expiry of the current sentence: Army Act 1955 ss 118A(2A)(a), 118ZA(1), (2) (s 118A as so added; ss 118A(2A), 118ZA added by the Armed Forces Discipline Act 2000 s 25, Sch 3 paras 9, 12); Air Force Act 1955 ss 118A(2A), 118ZA(1), (2) (s 118A as so

added; ss 118(2A), 118ZA added by the Armed Forces Discipline Act 2000 Sch 3 paras 9, 12); Naval Discipline Act 1957 ss 86(2A), 85A(1), (2) (s 86(2A) added by the Armed Forces Act 1971 s 39(1), (3); Naval Discipline Act 1957 s 85A added by the Armed Forces Discipline Act 2000 Sch 3 para 11). If the offender does not so elect, or if having made such an election withdraws it during the period during which he can bring an appeal to the summary appeal court (see paras 360, 366 ante), his sentence or, in the case of withdrawal, the remainder of his sentence is suspended until the end of the appeal period (ie 14 days or such longer period as the court may allow: see the Army Act 1955 s 83ZE(2); the Air Force Act 1955 s 83ZE(2); the Naval Discipline Act 1957 s 52FK(2) (all as added); and paras 360, 366 ante) or, where an appeal is brought within the appeal period, until the determination of the appeal; and where an appeal is brought, the remainder of the offender's sentence is suspended until the determination of the appeal: Army Act 1955 s 118ZA(3), (4); Air Force Act 1955 s 118ZA(3), (4); Naval Discipline Act 1957 ss 85A(3), (4) (all as so added). Where the suspension of a sentence by virtue of these provisions would end before the expiry of the current sentence, the sentence runs from the expiry of the current sentence: Army Act 1955 s 118A(2A)(b); Air Force Act 1955 s 118A(2A)(b); Naval Discipline Act 1957 ss 86(2A)(b) (all as so added). As to the commencement and running of sentences see para 514 post.

5 le under the Army Act 1955 s 57(2), the Air Force Act 1955 s 57(2) or the Naval Discipline Act 1957 s 38(3) (all as amended): see para 411 ante.

6 Army Act 1955 s 118A(1), (2) (as added: see note 4 supra); Air Force Act 1955 s 118A(1), (2) (as added: see note 4 supra); Naval Discipline Act 1957 s 86(1), (2).

7 le offences under the Army Act 1955 s 70, the Air Force Act 1955 s 70, or the Naval Discipline Act 1957 s 42 (all as amended), as the case may be: see para 422 ante.

8 For the meaning of 'civil court' see para 57 note 2 ante.

9 Army Act 1955 s 118A(3) (as added: see note 4 supra); Air Force Act 1955 s 118A(3) (as added: see note 4 supra); Naval Discipline Act 1957 s 86(3) (added by the Armed Forces Act 1971 s 39(3)).

10 See the Army Act 1955 s 71AA(5)(a), Sch 5A para 10(5A)(a); the Air Force Act 1955 s 71AA(5)(a), Sch 5A para 10(5A)(a); the Naval Discipline Act 1957 s 43AA(5)(a), Sch 4A para 10(5A)(a) (all as added and substituted); and para 434 ante.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

440 Consecutive sentences of imprisonment or detention

TEXT AND NOTES--As to consecutive custodial sentences see now the Armed Forces Act 2006 s 188; and as to consecutive sentences of service detention see s 189.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/F. MISCELLANEOUS/441. Limitation on total period of sentences of detention.

441. Limitation on total period of sentences of detention.

No offender subject to naval discipline or military or air force law¹ may be kept continuously in detention for a period exceeding two years in pursuance of two or more sentences of detention². Where any person who has been sentenced by a court-martial under the Naval Discipline Act 1957, or under military or air force law, to detention is subsequently sentenced by a court-martial under military or air force law to imprisonment, any part of the sentence of detention which has not been served is thereupon remitted³. This also occurs where any person who has been sentenced, by court-martial or otherwise, to detention under the Naval Discipline Act 1957, or under military or air force law, is subsequently sentenced, by court-martial or otherwise, to imprisonment under the Naval Discipline Act 1957⁴.

¹ As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

² Army Act 1955 s 119A(1) (s 119A added by the Armed Forces Act 1971 s 40); Air Force Act 1955 s 119A(1) (s 119A added by the Armed Forces Act 1971 s 40); Naval Discipline Act 1957 s 89(1). These provisions have effect notwithstanding anything in the Army Act 1955 Pt II (ss 24-143) (as amended), the Air Force Act 1955 Pt II (ss 24-143) (as amended) or the Naval Discipline Act 1957 or Pt II (ss 45-92) (as amended) (as the case may be) (see the Army Act 1955 s 119A(1) (as so added); the Air Force Act 1955 s 119A(1) (as so added); and the Naval Discipline Act 1957 s 89(1)), but do not affect the validity of any order or direction for consecutive sentences of detention (ie as described in para 440 ante), although so much of any term of detention to which any such order or direction relates as would prolong the total term of detention beyond two years must be remitted by virtue of the order or direction (Army Act 1955 s 119A(2) (as so added); Air Force Act 1955 s 119A(2) (as so added); Naval Discipline Act 1957 s 89(2)). As to the commencement and running of sentences see para 514 post.

Where the whole or any part of a sentence of detention is suspended by virtue of the Army Act 1955 s 118ZA(3) or (4) (as added), the Air Force Act 1955 s 118ZA(3) or (4) (as added) (see para 514 post) or by virtue of the Naval Discipline Act 1957 s 85A(4) or (5) (as added) (see para 351 ante), any period of detention ending with the beginning of the suspension is taken for these purposes to be continuous with any period of detention beginning with the end of the suspension: Army Act 1955 s 119A(2A) (s 119A added by the Armed Forces Act 1971 s 40; Army Act 1955 s 119(2A) added by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 14); Air Force Act 1955 s 119A(2A) (s 119A added by the Armed Forces Act 1971 s 40; Air Force Act 1955 s 119(2A) added by the Armed Forces Discipline Act 2000 Sch 3 para 14); Naval Discipline Act 1957 s 89(2A) (added by the Armed Forces Discipline Act 2000 Sch 3 para 15).

³ Army Act 1955 s 119A(3); Air Force Act 1955 s 119A(3) (both as added: see note 2 supra). This provision enables the offender to be transferred forthwith to an establishment appropriate to the service of a sentence of imprisonment, and to be released from that establishment on the completion of the service of his term of imprisonment less any remission earned or parole granted, without a liability to be sent back to complete his term of detention.

⁴ Naval Discipline Act 1957 s 89(3).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision

in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(2) THE COMMON CODE OF OFFENCES AND PUNISHMENTS/(iii) Punishments and Orders under the Service Discipline Acts/F. MISCELLANEOUS/442. Conditional release pending appeal or review.

442. Conditional release pending appeal or review.

As from a day to be appointed¹, the Secretary of State² may by order³ make provision enabling a person who has been sentenced by a court-martial to be released from custody, pending a determination of an appeal against his conviction⁴ or the completion of a review of any finding or sentence⁵, subject to conditions⁶.

1 The Armed Forces Act 2001 s 30 is brought into force as from a day to be appointed by order under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 Such an order may, in particular, make provision: (1) as to the court to which or person to whom any application for release from custody is to be made; (2) as to the manner in which any such application is to be made; (3) as to the criteria to be applied when making a decision under the order; (4) as to the conditions that may be imposed; (5) as to the enforcement of the attendance or return to custody of the convicted person; (6) as to appeals against decisions taken under the order; and (7) for the time during which the convicted person is released from custody to be disregarded in computing the term of any sentence to which he is for the time being subject: Armed Forces Act 2001 s 30(3) (not yet in force: see note 1 supra). An order may also: (a) make provision equivalent to that made by any provision of the Bail Act 1976, the Magistrates' Courts Act 1980 or the Supreme Court Act 1981 relating to bail in criminal proceedings, subject to such modifications as may be specified in the order; (b) make different provision in relation to different courts; confer powers of arrest; and (c) make such amendments of the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, the Courts-Martial (Appeals) Act 1968 or the Armed Forces Act 1976 as appear to the Secretary of State to be necessary or appropriate in consequence of the order: Armed Forces Act 2001 s 30(4)(a)-(c), (e) (not yet in force: see note 1 supra). As to the statutory provisions relating to bail in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1165 et seq; MAGISTRATES vol 29(2) (Reissue) para 718. An order under the Armed Forces Act 2001 s 30 (prospectively added) may also create offences punishable with imprisonment for such term not exceeding two years as may be prescribed or by any less punishment provided by the service discipline Acts (this power to be construed with the Army Act 1955 s 71(1), the Air Force Act 1955 s 71(1), and the Naval Discipline Act 1957 s 43 (all as amended), which set out the scale of punishments applicable to military, air force and naval offenders (see para 424 ante)): Armed Forces Act 2001 s 30(4)(d), (5) (not yet in force: see note 1 supra). As to the service discipline Acts see para 302 ante.

4 Ie the determination of an appeal to the Courts-Martial Appeal Court: *ibid* s 30(2)(a)(i) (not yet in force: see note 1 supra). As to the Courts-Martial Appeal Court and appeals from courts-martial to that court see para 529 et seq post.

5 Ie the completion of a review under the Army Act 1955 s 113, the Air Force Act 1955 s 113, or the Naval Discipline Act 1957 s 70 (all as amended) (see paras 473, 512 post), of any finding of guilt or any sentence: Armed Forces Act 2001 s 30(2)(a)(ii) (not yet in force: see note 1 supra).

6 *Ibid* s 30(1) (not yet in force: see note 1 supra).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

442 Conditional release pending appeal or review

TEXT AND NOTES--Armed Forces Act 2001 s 30 (amended by Armed Forces Act 2006 Sch 16 para 195) now in force: SI 2006/2309. In exercise of his powers under the Armed Forces Act 2001 s 30, the Secretary of State has made the Armed Forces (Conditional Release from Custody) Order 2009, SI 2009/991, and the Court Martial Appeal Court (Bail) Order 2009, SI 2009/992.

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

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443. Taking of fingerprints and samples from convicted offenders.

A service policeman¹ may take fingerprints² and a sample of hair³ or a mouth swab from a person who has been convicted of an offence in service disciplinary proceedings⁴. Fingerprints may be taken for the record⁵, and hair and mouth swabs for the purpose of recording information⁶, and all may be taken without the person's consent⁷ and if necessary by the application of reasonable force by the policeman⁸. There are, however, certain circumstances in which fingerprints, samples and swabs may not be taken⁹. These powers are without prejudice to any power to take samples under any other enactment or under any rule of law¹⁰.

1 Is a member of the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police or the Royal Air Force Police: Armed Forces Act 1996 ss 11(4), 12(7) (s 11(4) amended by the Armed Forces Act 2001 s 34, Sch 6 para 48). For these purposes, 'the Royal Air Force Police' includes the Provost Marshal of the Royal Air Force and any officer appointed to exercise the functions conferred by or under the Air Force Act 1955 on provost officers: Armed Forces Act 1996 s 11(4) (as so amended).

2 'Fingerprints' includes palm prints: *ibid* s 11(4).

3 Is hair other than pubic hair (*ibid* s 12(2)), the sample of being taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than are reasonably considered to be necessary for a sufficient sample (s 12(6)). 'Sufficient' and 'insufficient', in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample: s 12(7).

4 *Ibid* ss 11(1), 12(1), (2). 'Service disciplinary proceedings' means any proceedings before a court-martial or a standing civilian court under the Army Act 1955, the Air Force Act 1955 Act or the Naval Discipline Act 1957, and any proceedings by way of summary trial under the Naval Discipline Act 1957 s 52D (as added and amended): Armed Forces Act 1996 ss 11(4), 12(7) (s 11(4) amended by the Armed Forces Act 2001 s 38, Sch 7 Pt I). As to army and air force courts-martial see para 480 *et seq post*. As to naval courts-martial see para 448 *et seq post*. As to the standing civilian court see para 520 *et seq post*. As to summary trial under the Naval Discipline Act 1957 s 52D (as added and amended) see para 350 *ante*.

5 Armed Forces Act 1996 s 11(1).

6 *Ibid* s 12(1).

7 *Ibid* ss 11(1), 12(1).

8 *Ibid* ss 11(3), 12(5).

9 See *ibid* ss 11(2), 12(3), (4). Section 11(2) provides that the power under to take fingerprints may not be exercised where the person concerned has had his fingerprints taken by a service policeman in the course of the investigation of the offence or since his conviction or after the end of the period of three months beginning with the date of the conviction. Section 12(3), (4) provide that the power to take hair samples or mouth swabs may be exercised only if the convicted person has not had such a sample taken from him since his conviction (in which case the power may not be exercised after the end of the period of three months beginning with the date of his conviction) or if he has had such a sample taken from him but it has proved insufficient (in which case the power may not be exercised after the end of the period of three months beginning with the date on which a service policeman is informed of the fact that the sample has proved insufficient).

10 *Ibid* ss 11(5), 12(8).

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

443 Taking of fingerprints and samples from convicted offenders

TEXT AND NOTES--Armed Forces Act 1996 ss 11, 12 repealed: Armed Forces Act 2006 Sch 17.

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444. Compensation for miscarriages of justice.

Where a person who has suffered punishment as a result of a conviction by a court-martial¹ and that conviction has been reversed², or the person in question has been pardoned, on the ground that a new or newly discovered fact³ shows beyond reasonable doubt that there has been a miscarriage of justice, he is entitled to be compensated by the Secretary of State⁴. Compensation is only payable if an application is made to the Secretary of State⁵. The question whether there is a right to compensation is determined by the Secretary of State⁶, and, where he so determines, the amount of compensation is assessed by an assessor appointed by the Secretary of State⁷.

1 For these purposes, a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted: Armed Forces Act 1991 s 10(6).

2 For these purposes, 'reversed' is to be construed as referring to a conviction having been quashed either on an appeal out of time or on a reference under the Courts-Martial (Appeals) Act 1968 s 34 (as amended) (see para 445 post): Armed Forces Act 1991 s 10(5).

3 No right to compensation accrues where the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted: *ibid* s 10(1).

4 *Ibid* s 10(1). If the person in question is dead, the right to be paid compensation accrues to his personal representatives: s 10(1). As to the Secretary of State see para 2 ante.

5 *Ibid* s 10(2).

6 *Ibid* s 10(3).

7 *Ibid* s 10(4). Section 10(7) and Sch 1 make provision in connection with assessors.

UPDATE

423-444 Punishments and Orders under the [Armed Forces Act 2006]

Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. For replacement provision as to punishments available to Court Martial see the Armed Forces Act 2006 s 164; and PARA 424. For further provision in relation to sentencing powers and the definition etc of certain sentences see ss 173-236; and PARA 424A et seq.

444 Compensation for miscarriages of justice

TEXT AND NOTES--Armed Forces Act 1991 s 10 repealed: Armed Forces Act 2006 Sch 17. As to compensation for miscarriages of justice, see now the Armed Forces Act s 276.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(3) THE JUDGE ADVOCATE OF THE FLEET AND THE JUDGE ADVOCATE GENERAL/445. The Judge Advocate of Her Majesty's Fleet and the Chief Naval Judge Advocate.

(3) THE JUDGE ADVOCATE OF THE FLEET AND THE JUDGE ADVOCATE GENERAL

445. The Judge Advocate of Her Majesty's Fleet and the Chief Naval Judge Advocate.

The Judge Advocate of Her Majesty's Fleet is the advisor to the Admiralty Board¹ on matters regarding the administration of justice under the Naval Discipline Act 1957. He must be a barrister or advocate of not less than ten years' standing², is appointed by Her Majesty on the recommendation of the Lord Chancellor³, and is removable on the same authority for inability or misbehaviour⁴. He holds office until he is 70 years of age, but the Lord Chancellor may authorise his continuance in office up to the age of 72⁵. He may be paid such salary and travelling and subsistence allowances as the Lord Chancellor, with Treasury approval, may determine⁶. Provision is also made for the payment of pensions to retired Judge Advocates⁷.

The Judge Advocate's principal role is to review the verbatim transcripts of proceedings of any contested trial by naval court-martial and any uncontested cases where any point of law arises, and to advise the Admiralty Board on the legality of those proceedings, drawing attention to material irregularities as he may consider to be necessary or desirable. In practice his responsibilities are widely construed⁸. If, in the case of a conviction of a person by naval court-martial, it appears to the Judge Advocate that the finding of the court involves a point of law of exceptional importance which in his opinion should be determined by the Courts-Martial Appeal Court, he may refer the finding to that court⁹.

The Chief Naval Judge Advocate is a serving officer of the rank of Commodore, Royal Navy, and is also a barrister. His duties include appointing a judge advocate to be a member of every court-martial¹⁰, appointing judge advocates for summary appeal courts¹¹, assisting and consulting with the Judge Advocate of Her Majesty's Fleet and sitting as judge advocate at all naval courts-martial where the seriousness of the charges, the complexity of the trial, the rank of the accused or the service interest may require it¹².

1 As to the composition of the Admiralty Board see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 445; as to the duties of the Admiralty Board in connection with the raising and maintenance of the Royal Navy see para 151 ante. As to the Admiralty Board see also para 2 ante.

2 See the Courts-Martial (Appeals) Act 1951 s 28(2) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 10; and by the Armed Forces Act 1996 s 5, Sch 1 para 64). This provides that no person may be qualified for appointment as Judge Advocate of Her Majesty's Fleet unless he is: (1) a person who has a 10 year general qualification (see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742)); (2) an advocate in Scotland of at least 10 years' standing, or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least 10 years; or (3) a member of the Bar of Northern Ireland of at least 10 years' standing.

3 Courts-Martial (Appeals) Act 1951 s 28(1). The office of Judge Advocate of Her Majesty's Fleet has been a continuous one since 1661.

4 Ibid s 28(3).

5 See ibid s 28(3) (amended by the Judicial Pensions and Retirement Act 1993 ss 26(10), 31(4), Sch 6 para 33, Sch 9). The Lord Chancellor's power to authorise continuance in office is subject to the Courts-Martial (Appeals) Act 1951 s 26(4), (6) (as to which see COURTS vol 10 (Reissue) para 535): s 28(3) (as so amended). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

6 Ibid s 28(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

7 The office of Judge Advocate of Her Majesty's Fleet is an office to which the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended), which makes provision as to the payment of pensions and other benefits to holders of judicial offices, applies: see s 1(1)(a), Sch 1 Pt II; and COURTS vol 10 (Reissue) para 537 et seq.

8 The functions of the Judge Advocate of Her Majesty's Fleet in relation to courts-martial and disciplinary courts are not prejudiced by anything in the Naval Discipline Act 1957: s 73 (amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 1).

9 Courts-Martial (Appeals) Act 1968 s 34(1)(a). As to such references see further para 531 post.

10 See the Naval Discipline Act 1957 s 53B (as added); the Manual of Naval Law vol II Ch 19 art 1902; and para 453 post.

11 See ibid s 52FG (as added); and para 359 ante.

12 See the Chief Naval Judge Advocate's Terms of Reference.

UPDATE

445 The Judge Advocate [General] and the Chief Naval Judge Advocate

TEXT AND NOTES 1-7--1951 Act s 28 repealed: Armed Forces Act 2006 Sch 17.

NOTE 8--1957 Act s 73 further amended to refer the Judge Advocate General: Armed Forces Act 2006 Sch 16 para 38.

TEXT AND NOTE 9--1968 Act s 34(1)(a) amended to refer to the Judge Advocate General and the 'Court Martial': Armed Forces Act 2006 Sch 8 para 36.

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446. The Judge Advocate General and his assistants.

The Judge Advocate General¹ is appointed by Her Majesty on the recommendation of the Lord Chancellor². Unless he is being promoted from the position of Vice Judge Advocate General or Assistant Judge Advocate General³, he must be a barrister or advocate of at least ten years standing⁴. For the purpose of assisting the Judge Advocate General in the exercise and performance of his powers and duties there is an officer known as the Vice Judge Advocate General and a number of other officers known as Assistant Judge Advocates General⁵. Each of these officers is appointed by the Lord Chancellor, although the number of Assistant Judge Advocates General that may be appointed is subject to Treasury approval⁶. A person cannot be appointed Vice Judge Advocate General or Assistant Judge Advocate General unless he a barrister or advocate of at least seven years standing⁷.

Persons holding any of these offices are barred from legal practice⁸. Before recommending a person for, or appointing a person to, any of these offices, the Lord Chancellor must take steps to satisfy himself that the health of the person proposed to be recommended or appointed is satisfactory⁹. Subject to the proviso that any of these officers may at any time be removed for inability or misbehaviour¹⁰, each officer holds office until he is 70 years of age (although the Lord Chancellor may authorise the Judge Advocate General's continuance in office up to the age of 72)¹¹, and may be paid such salary and travelling and subsistence allowances as the Lord Chancellor, with Treasury approval, may determine¹². Provision is also made for the payment of pensions to retired office-holders¹³.

1 The full title of this office is the Advocate General or Judge Martial of all Her Majesty's regular, auxiliary and reserve land and air forces: Courts-Martial (Appeals) Act 1951 s 29. As to the duties of the Judge Advocate General see para 447 post.

2 Ibid s 29. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

3 As to the Vice Judge Advocate General and the Assistant Judge Advocate General see the text and notes 5-7 infra.

4 See the Courts-Martial (Appeals) Act 1951 s 31(1) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 11(1); and by the Armed Forces Act 1996 s 5, Sch 1 para 65), which provides that no person may be qualified for appointment as Judge Advocate General unless he is: (1) a person who has a 10 year general qualification (see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) an advocate in Scotland of at least 10 years' standing, or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least 10 years; (3) a member of the Bar of Northern Ireland of at least 10 years' standing; or (4) the Vice Judge Advocate General or an Assistant Judge Advocate General.

5 Courts-Martial (Appeals) Act 1951 s 30(1). The Lord Chancellor is required to appoint such of the Assistant Judge Advocates General as he thinks necessary to sit as magistrates in standing civilian courts: see the Armed Forces Act 1976 s 6(4); and para 520 post.

6 Ibid s 30(1) (amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 Pt 2 para 5, Sch 7 Pt 3). If at any time it appears to the Lord Chancellor that it is expedient that the Judge Advocate General should be temporarily assisted in the exercise and performance of his powers and duties by more persons than hold appointments by virtue of the Courts-Martial (Appeals) Act 1951 s 30(1) (ie the Vice Judge Advocate General and the Assistant Judge Advocates General), the Lord Chancellor may appoint such persons temporarily to assist the Judge Advocate General in the exercise and performance of his powers and duties as the Lord Chancellor may, with the approval of the Treasury as to numbers, determine: s 30(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

7 See *ibid* s 31(2) (amended by the Courts and Legal Services Act 1990 Sch 10 para 11(2); by the Armed Forces Act 1996 Sch 1 para 65; and by the Armed Forces Act 2001 s 34, Sch 6 Pt 2 para 6(a)). This provides that no person may be qualified for appointment as Vice Judge Advocate General or Assistant Judge Advocate General unless he is: (1) a person who has a seven year general qualification (see the Courts and Legal Services Act 1990 s 71; and *LEGAL PROFESSIONS* vol 65 (2008) PARA 742)); (2) an advocate in Scotland of at least seven years' standing, or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least seven years; or (3) a member of the Bar of Northern Ireland of at least seven years' standing.

8 Courts and Legal Services Act 1990 s 75, Sch 11.

9 Courts-Martial (Appeals) Act 1951 s 31(4) (amended by the Armed Forces Act 2001 Sch 6 Pt 2 para 6(c)).

10 Courts-Martial (Appeals) Act 1951 s 32(1) (amended by the Armed Forces Act 2001 Sch 6 Pt 2 para 7). The Judge Advocate General is removable by Her Majesty upon a recommendation made by the Lord Chancellor; the other officers are removable by the Lord Chancellor: Courts-Martial (Appeals) Act 1951 s 32(1) (as so amended).

11 See *ibid* s 32(2) (amended by the Judicial Pensions and Retirement Act 1993 ss 26(10), 31(4), Sch 6 para 34, Sch 9; and by the Armed Forces Act 2001 Sch 6 Pt 6 para 32). The Lord Chancellor's power to authorise the Judge Advocate General's continuance in office is subject to the Judicial Pensions and Retirement Act 1993 s 26(4), (6) (see *COURTS* vol 10 (Reissue) para 535): Courts-Martial (Appeals) Act 1951 s 32(2) (as so amended). A person appointed under s 30(2) (as amended) temporarily to assist the Judge Advocate General in the exercise and performance of his powers and duties (see note 6 *supra*) holds and vacates office in accordance with the terms of his appointment: s 32(3).

12 *Ibid* s 33.

13 The offices of Judge Advocate General, Vice Judge Advocate General and Assistant Judge Advocate General are offices to which the Judicial Pensions and Retirement Act 1993 Pt I (ss 1-18) (as amended), which makes provision as to the payment of pensions and other benefits to holders of judicial offices, applies: see s 1(1)(a), Sch 1 Pt II; and *COURTS* vol 10 (Reissue) para 537 *et seq*.

UPDATE

446 The Judge Advocate General and his assistants

TEXT AND NOTES--The Lord Chancellor's functions under the 1951 Act ss 30, 31(4), 32, 33 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) PARA 489A.1.

NOTE 1--1951 Act s 29 amended: Armed Forces Act 2006 Sch 16 para 16.

TEXT AND NOTE 2--Any recommendation for appointment to the office of Judge Advocate General in exercise of the function under the 1951 Act s 29 must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 1, in accordance with ss 85-93, 96: see *COURTS* vol 10 (Reissue) PARA 515B.18.

TEXT AND NOTES 4, 7--1951 Act s 31(1), (2) further amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 6.

TEXT AND NOTES 5, 6--Any appointment to the office of Vice Judge Advocate General or Assistant Judge Advocate General (or a person appointed temporarily to assist the Judge Advocate General) in exercise of the function under the 1951 Act s 30(1), (2) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 2, in accordance with ss 85-93, 96.

NOTE 6--The Lord Chancellor may not appoint a holder of relevant office under the 1951 Act s 30(2) without the concurrence of the Lord Chief Justice of England and Wales: s 30(3)(s 30(3)-(5) added by Tribunals, Courts and Enforcement Act 2007 s 58). In the 1951 Act s 30(3) 'holder of relevant office' means a person who has, within the two

years ending with the day on which s 30(5) comes into force (ie 19 September 2007: see SI 2007/2709), been appointed as judge advocate to a court-martial under (1) the Army Act 1955 s 84B, (2) the Air Force Act 1955 s 84B, or (3) the Naval Discipline Act 1957 s 53B: 1951 Act s 30(5). The Constitutional Reform Act 2005 s 85 (selection of certain office holders) does not apply to an appointment to which the 1951 Act s 30(3) applies: s 30(4).

TEXT AND NOTE 10--1951 Act s 32(1) now s 32(1), (1A)-(1C) (substituted by Constitutional Reform Act 2005 Sch 4 para 40). The Judge Advocate General is removable by Her Majesty on the ground of inability or misbehaviour on a recommendation in that behalf made by the Lord Chancellor with the concurrence of all of (1) the Lord Chief Justice of England and Wales; (2) the Lord President of the Court of Session; (3) the Lord Chief Justice of Northern Ireland: 1951 Act s 32(1). The Vice Judge Advocate General may be removed for inability or misbehaviour by the Lord Chancellor with the concurrence of all of (a) the Lord Chief Justice of England and Wales; (b) the Lord President of the Court of Session; (c) the Lord Chief Justice of Northern Ireland: s 32(1A). An Assistant Judge Advocate General may be removed for inability or misbehaviour by the Lord Chancellor with the concurrence of the appropriate senior judge: s 32(1B). The appropriate senior judge is the Lord Chief Justice of England and Wales, unless (i) the Assistant Judge Advocate General exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session, or (ii) the Assistant Judge Advocate General exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland: s 32(1C).

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447. Duties of the Judge Advocate General and his assistants.

It is the duty of the Judge Advocate General¹ to monitor the criminal justice system in the army and air force so as to ensure its proper working. He is responsible for: (1) superintending the administration of military and air force law and appointing judge advocates at army and air force courts-martial and to sit at pre-trial directions or preparatory hearings²; (2) appointing judge advocates to sit in the summary appeal court or to deal with preliminary proceedings before that court, or to exercise the jurisdiction of the court sitting alone prior to the appeal hearing; and (3) appointing judicial officers to hear custody applications³. The Judge Advocate General decides which of the standing civilian court magistrates appointed from the Assistant Judge Advocates General by the Lord Chancellor⁴ will sit to try a particular list. The office of the Judge Advocate General is responsible for advising the reviewing authority in respect of findings and sentence at courts-martial and before standing civilian courts⁵. The Judge Advocate General is responsible for the custody of the records of army and air force courts-martial and of the proceedings of cases tried by standing civilian courts but not the summary appeal court⁶. The Judge Advocate General issues practice directions for the guidance of judicial officers.

The Judge Advocate General is empowered, in the case of the conviction of a person by court-martial, to refer the finding of the court to the Courts-Martial Appeal Court if it appears to him that the finding involves a point of law of exceptional importance which ought to be determined by the appeal court⁷.

Any person tried by a court-martial is entitled to obtain from the Judge Advocate General, on demand and on payment⁸, a copy of the record of the proceedings of the court⁹, unless the Secretary of State certifies that for reasons of security the proceedings or any part of them should not be disclosed¹⁰. Where such a person has died, his personal representatives have a similar entitlement¹¹. A parent or guardian who has been ordered by a court-martial to pay a fine or compensation order on behalf of a young offender¹², or, in the event of death, their personal representatives, have a right to a copy of the record of the relevant proceedings¹³, as does a person tried or sentenced by a standing civilian court and his personal representatives¹⁴.

1 As to the appointment, etc, of the Judge Advocate General see para 446 ante. The list of the functions and responsibilities of the Judge Advocate General which is given in this paragraph is derived principally from the Queen's Regulations for the Army 1975 Ch 6 Annex E. It may also be accepted as a correct statement of the functions and responsibilities of the Judge Advocate General in relation to the air force, although there is no equivalent air force legislation. The Army Act 1955 s 117 and the Air Force Act 1955 s 117 contain a saving for the functions of the Judge Advocate General in relation to courts-martial from prejudice by the provisions of the Army Act 1955 ss 24-116 (as amended) or the Air Force Act 1955 ss 24-116 (as amended), as the case may be, relating to discipline, trial and, review and revision of court-martial proceedings.

2 As to the appointment of judge advocates at army and air force courts-martial see para 484 post. The appointment of the judge advocate for a particular court-martial or for preliminary hearings is normally made by the Judge Advocate General by warrant under his hand, or by a person delegated to perform this function on his behalf such as a civil servant within the office of the Judge Advocate General; although, as to the appointment of judge advocates for field general courts-martial, see para 482 post.

3 These matters are customarily dealt with by the civil servant within the office of this Judge Advocate General who arranges the listing of work. No warrant is required.

4 As to such appointments see para 446 ante. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

5 Much of this work is done by the Vice Judge Advocate General as well as by Assistant Judge Advocates General. This is seen as a quasi-judicial function and if the Judge Advocate General delegates the giving of advice he does not interfere with the judicial officer's discretion. However, if a judicial officer proposes to advise the quashing of a finding of a reduction in sentence, the papers must be referred to the Judge Advocate General or the Vice Judge Advocate General, who may decide to give different advice. The advice does not bind the reviewing authority.

6 See the Army Act 1955 s 141(1) (amended by the Armed Forces Act 1981 s 8(2)); and the Air Force Act 1955 s 141(1) (amended by the Armed Forces Act 1981 s 8(2)). These provide that records of courts-martial proceedings must be kept in the Office of the Judge Advocate General for a minimum period. Thereafter the proceedings of important courts-martial are sent to the Public Records Office. The remainder are destroyed although a permanent record of the charges, verdict and sentence, if any, is kept in the office of the Judge Advocate General. The proceedings of the standing civilian court are also retained in the Office of the Judge Advocate General: see the Standing Civilian Courts Order 1997, SI 1997/172, art 89. The proceedings of the summary appeal court are kept by the court administration officer: Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 64(2); Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 64(2). Provision is also made for the procedure whereby an individual can obtain a copy of the record including the transcript which forms part of it: see the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, r 64; and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, r 64.

7 Courts-Martial (Appeals) Act 1968 s 34(1)(a). As to such references see further para 531 post.

8 The rate of payment for a copy is determined by the Judge Advocate General: Army Act 1955 s 141(2) (amended by the Armed Forces Act 1971 s 58); Air Force Act 1955 s 141(2) (amended by the Armed Forces Act 1971 s 58).

9 Army Act 1955 s 141(2); Air Force Act 1955 s 141(2). Such copies may only be obtained on demand within the relevant period, which means five years from the date of an acquittal, or, where an accused person was convicted, of the promulgation of the findings and sentence, or, where a person was acquitted on one or more charges but convicted on another or others, of the promulgation of the finding or findings of guilty and the sentence thereon, or of the withholding of confirmation of that findings or those findings: Army Act 1955 s 141(5) (amended by the Armed Forces Act 1996 s 35(2), Sch 7); Air Force Act 1955 s 141(5) (amended by the Armed Forces Act 1996 Sch 7). The right to obtain a copy of the record does not extend, however, to so much of the record as relates only to a charge on which a person was found not guilty: Army Act 1955 s 141(3A) (added by the Armed Forces Act 1996 s 7(1), (2)(a)); Air Force Act 1955 s 141(3A) (added by the Armed Forces Act 1996 s 7(1), (2)(a)).

10 Army Act 1955 s 141(4) (amended by the Armed Forces Act 1996 s 7(1), (2)(b)); Air Force Act 1955 s 141(4) (amended by the Armed Forces Act 1996 s 7(1), (2)(b)).

11 Army Act 1955 s 141(3) (amended by the Armed Forces Act 1971 s 58); Air Force Act 1955 s 141(3) (amended by the Armed Forces Act 1971 s 58). The principal difference between the rights of access of the person tried and his personal representative is that the personal representative's right lasts for only 12 months: Army Act 1955 s 141(3); Air Force Act 1955 s 141(3).

12 In relation to whom an order has been made under the Army Act 1955 Sch 5A para 13 or the Air Force Act 1955 Sch 5A para 13 (both as added and amended): Army Act 1955 s 141A(1) (s 141A added by the Armed Forces Act 1981 s 8(1)); Air Force Act 1955 s 141A(1) (s 141A added by the Armed Forces Act 1981 s 8(1)). As to such orders see paras 432, 438 ante.

13 See the Army Act 1955 s 141A(2)-(7) (as added: see note 12 supra); and the Air Force Act 1955 s 141A(2)-(7) (as added: see note 12 supra).

14 See the Standing Civilian Courts Order 1997, SI 1997/172, art 91, Sch 4.

UPDATE

447 Duties of the Judge Advocate General and his assistants

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 replaced: Armed Forces Act 2006.

TEXT AND NOTE 7--1968 Act s 34(1)(a) amended: Armed Forces Act 2006 Sch 8 para 36.

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(4) NAVAL COURTS-MARTIAL

(i) Constitution and Jurisdiction

448. Procedure and practice of courts-martial.

The procedure and practice of naval courts-martial is regulated by the Naval Discipline Act 1957¹ and by rules which the Secretary of State has made under that Act². The rules which the Secretary of State is empowered by the Naval Discipline Act 1957³ to make have no effect so far as they are inconsistent with any provisions of that Act⁴. Such rules must be made by statutory instrument which is subject to annulment by either House of Parliament⁵.

Courts-martial normally sit in open court and in the presence of the accused⁶, but will sit in closed court while deliberating on finding and sentence on any charge⁷. Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) must be given in open court⁸. The judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court⁹. Courts-martial must be held on board one of Her Majesty's ships or vessels¹⁰, or at such premises on shore, whether within or without the United Kingdom¹¹, as may be specified in the order assembling the court¹². Courts must sit from day to day, except Sundays, until a finding is reached or, in the event of conviction, until sentence is given, unless prevented by weather or other unavoidable cause¹³. However, a court may be adjourned if it appears to it that an adjournment is desirable, although the adjournment may not exceed six days unless the prosecuting authority and the accused consent¹⁴.

Dress at courts-martial is not specified in the rules. However, it is customary for naval personnel at courts-martial to be required to dress in their No 1 uniform with medals. Male officers, and female officers wearing uniform with trousers rather than skirt, who are members of the court or appearing as an advocate, also wear a sword. Civilian advocates dress as they would in the Crown Court, and address the president of the court and the judge advocate as 'Sir' or 'Ma'am' as appropriate.

1 See the Naval Discipline Act 1957 ss 52-69 (as amended); and para 449 et seq post.

2 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170 (as amended). The rules gave effect to the changes in the arrangements for court-martial trials. As to the Secretary of State see para 2 ante.

3 As to the power to make rules see the Naval Discipline Act 1957 s 58(1)-(3) (s 58 substituted by the Armed Forces Act 1996 s 5, Sch 1 para 57; and the Naval Discipline Act 1957 s 58(2) amended by the Armed Forces Act 2001 s 28(5)).

4 Naval Discipline Act 1957 s 58(4).

5 Ibid s 58(5).

6 Ibid s 61(1). The courts-martial have the same power to exclude the public as a civil court; and, without prejudice to this power, they may make an order to exclude the public from any part of the proceedings if it appears that there might otherwise be a disclosure of information useful to any enemy: s 61(2). As to the general requirement for hearings to be in public see COURTS vol 10 (Reissue) para 312. As to the meaning of 'enemy' see para 305 note 1 ante.

7 Ibid s 61(3) (s 61(3)-(8) added by the Armed Forces Act 1996 s 5, Sch 1 para 60). A court-martial may sit in closed court on any other deliberation amongst the members: Naval Discipline Act 1957 s 61(4) (as so added). Where a court-martial sits in closed court, no person may be present except the members of the court and such other persons as may be prescribed by rules under s 58 (as amended): s 61(5) (as so added). The judge advocate may not be present while the other members of the court are deliberating on their finding on any charge: s 61(6) (as so added). As to the constitution of courts-martial see para 449 post.

8 Ibid s 61(7) (as added: see note 7 supra).

9 Ibid s 61(8) (as added: see note 7 supra).

10 For the meanings of 'Her Majesty's ships' and 'Her Majesty's vessels' see para 6 note 3 ante.

11 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

12 Naval Discipline Act 1957 s 56(1) (amended by the Armed Forces Act 1996 Sch 1 para 54). As to the ordering of courts-martial see para 452 post. The court may be adjourned, either generally or for the purpose of any part of the proceedings, from the original place directed to any other place appointed if the interests of justice so require: Naval Discipline Act 1957 s 56(2) (amended by the Armed Forces Act 1996 ss 5, 35(2), Sch 1 para 54(3), Sch 7 Pt I).

13 Naval Discipline Act 1957 s 56(4).

14 Ibid s 56(3). As to the prosecuting authority see para 316 ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(i) Constitution and Jurisdiction/449. Constitution of courts-martial.

449. Constitution of courts-martial.

A court-martial consists of the president, the judge advocate and not less than four nor more than eight other persons¹. No one may be appointed a member of a court-martial unless he is a warrant officer², or a naval officer³ of or above the rank of lieutenant and he has been an officer of any of Her Majesty's naval, military or air forces for a period of not less than three years or for periods amounting in the aggregate to not less than three years⁴. The officers appointed members of a court-martial must not all belong to the same ship or naval establishment⁵. The president of a court-martial must not be below the rank of captain and, in the case of a court-martial for the trial of an officer of flag rank, must be an officer of flag rank⁶. A court-martial for the trial of an officer of flag rank must not include any member below the rank of captain⁷. A court-martial for the trial of a commodore or captain must not include any member below the rank of commander⁸. A court-martial for the trial of a commander must include at least two members, in addition to the president, who are not below the rank of commander⁹. If, in the opinion of the court administration officer¹⁰, the necessary number of naval officers having suitable qualifications is not, with due regard to the public service, available, he may appoint as any member of the court (but not as its president) any military or air force officer or warrant officer having qualifications corresponding to those required for a naval officer or warrant officer¹¹.

1 Naval Discipline Act 1957 s 54(1) (s 54 substituted by the Armed Forces Act 2001 s 19, Sch 2 para 16). As to the judge advocate see para 453 post.

2 'Warrant officer' does not include an acting warrant officer (that is a warrant officer whom a commanding officer has power under Queen's Regulations to order to revert from the rank of warrant officer): Naval Discipline Act 1957 s 54(7) (as substituted: see note 1 supra).

3 'Naval officer' means an officer belonging to Her Majesty's naval forces and subject to the Naval Discipline Act 1957: s 54(7) (as substituted: see note 1 supra). For the meaning of 'Her Majesty's naval forces' see para 7 ante.

4 Ibid s 54(1)(c), (3) (as substituted: see note 1 supra). The members of the court-martial must not include any warrant officer unless the court-martial is for the trial of a person of a rank or rate below that of a warrant officer, in which case up to two warrant officers may be members: s 54(1)(c), (5)(a) (as so substituted). The members must not include any officer who, immediately before he received his commission, was a warrant officer, unless the court-martial is for the trial of a person of a rank or rate below that which the officer held immediately before he received his commission: s 54(5)(b) (as so substituted).

5 Ibid s 54(4) (as substituted: see note 1 supra). For the meaning of 'Her Majesty's naval establishments' see para 6 note 5 ante.

6 Ibid s 54(2) (as substituted: see note 1 supra).

7 Ibid s 54(5)(c) (as substituted: see note 1 supra).

8 Ibid s 54(5)(d) (as substituted: see note 1 supra).

9 Ibid s 54(5)(e) (as substituted: see note 1 supra).

10 'Court administration officer' means an officer (or other person) appointed by the Defence Council to order courts-martial and perform such other functions as may be prescribed by rules under ibid s 58 (as amended) (see para 448 ante); and 'the court administration officer', in relation to a court-martial, means the court administration officer who ordered the court-martial and includes his successor or any person for the time

being exercising his or his successor's functions: ss 53A, 135(1) (definitions added by the Armed Forces Act 1996 s 5, Sch 1 paras 51, 94(b)). As to the Defence Council see para 2 ante.

11 Naval Discipline Act 1957 s 54(6) (as substituted: see note 1 supra). 'Air force officer' means an officer belonging to Her Majesty's air forces and subject to air force law, and 'military officer' means an officer belonging to Her Majesty's military forces and subject to military law; similar provisions apply to warrant officers: see s 54(7) (as so substituted). As to ineligibility for membership of courts-martial see para 452 post. As to civilians subject to the Naval Discipline Act 1957 see paras 306, 311 ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(i) Constitution and Jurisdiction/450. Quorum.

450. Quorum.

The absence of one or more of the officers appointed members of the court-martial, other than the president¹, will not invalidate the proceedings so long as the number of members present is not reduced below four and provided that any member who has been absent for any time during a sitting takes no further part in the proceedings².

¹ As to the constitution of courts-martial see para 449 ante.

² Naval Discipline Act 1957 s 57 (amended by the Armed Forces Act 1996 ss 5, 35(2), Sch 1 para 56). If, after the commencement of the trial, the president dies or is otherwise unable to attend, the court-martial must be dissolved: see the Naval Discipline Act 1957 s 56A(3) (as added); and para 452 post.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(i) Constitution and Jurisdiction/451. Jurisdiction.

451. Jurisdiction.

Any offence within the purview of the naval penal code¹ committed by a person to whom it applies² may be tried and punished by court-martial provided that there is jurisdiction as to place and time³. A person subject to the Naval Discipline Act 1957 who commits an offence in relation to a court-martial may be brought to trial in the normal way⁴, or if the court is of the opinion that it is expedient that the offender should be dealt with summarily it may deal with the offence itself⁵.

1 As to the common code for offences and punishments see para 391 et seq ante.

2 As to the persons who are subject to naval discipline see paras 306, 309 et seq ante.

3 As to jurisdiction as affected by place and time see paras 303-304 ante. Of particular note is the requirement that persons who commit offences whilst subject to the Naval Discipline Act 1957 may not be tried by court-martial unless the trial is begun within six months after they cease to be so subject: see s 52(2) (as amended); and para 304 ante.

4 Offences in relation to courts-martial (see para 411 ante), including army and air force courts-martial and those held in pursuance of the law of any colony, are punishable in the case of persons subject to naval discipline by imprisonment for a term not exceeding two years or any less punishment authorised by the Naval Discipline Act 1957: see s 38(1), (2) (as amended); and para 411 ante. As to the meaning of 'colony' see para 20 note 4 ante.

5 See *ibid* s 38(3) (as amended); and para 411 ante. As to the punishments available to the court in these circumstances see para 411 ante. An offence of contempt of court committed by a civilian may be certified to the appropriate civil court: see para 505 post; and CONTEMPT OF COURT.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

451 Jurisdiction

TEXT AND NOTES--Replaced. The Court Martial has jurisdiction to try any service offence: Armed Forces Act 2006 s 50(1). 'Service offence' means (1) any offence under Pt 1 (ss 1-49) (see PARA 392 et seq); (2) an offence under s 107 (breach of requirement imposed on release from custody) (see PARA 345); (3) an offence under s 229 (breach of service restraining order) (see PARA 424D); (4) an offence under s 266 (failure to comply with financial statement order) (see PARA 423B.4); (5) any offence under Pt 13 Ch 1 (ss 305-308 (testing for alcohol and drugs) (see PARA 406); (6) any offence under regulations under s 328 (false answer during enlistment in a regular force) (see PARA 413) or s 343 (service inquiries) (see PARA 190) that the regulations provide is a service offence; (7) an offence under the Armed Forces Act 1991 s 18 or 20 (orders for the protection of children) (see PARAS 69, 71); (8) an offence under the Reserve Forces Act

1996 ss 95-97 (reserve forces offences); or (9) an offence under the Reserve Forces Act 1996 Sch 1 para 5(1) (false answer during enlistment in a reserve force) committed by a person within Sch 1 para 5(3): Armed Forces Act 2006 s 50(2). As to offences of misbehaviour in court, see now s 309.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(i) Constitution and Jurisdiction/452. Ordering of courts-martial.

452. Ordering of courts-martial.

On receipt of the prosecution papers, and a letter from the court administration officer¹ explaining the opportunities for legal assistance and a statement explaining the rights of an accused facing court-martial², the commanding officer³ must notify the accused that he is to be tried by court-martial⁴.

On being notified by the prosecuting authority of the charge preferred, a court administration officer must order a court-martial and, not less than 24 hours before the time appointed for trial, serve on the accused and other specified persons a copy of the order assembling the court⁵. The order assembling the court-martial must specify:

- 434 (1) the date, time and place at which the court-martial is to sit;
- 435 (2) the officers who are to be members of the court-martial⁶;
- 436 (3) which of those officers is to be president of the court-martial;
- 437 (4) any warrant officers who are to be members of the court-martial; and
- 438 (5) any other officers or warrant officers appointed for the purpose of filling vacancies,

and must state that a judge advocate⁷ appointed by or on behalf of the Chief Naval Judge Advocate⁸ is to be a member of the court-martial⁹. At any time before the commencement of the trial, the court administration officer may amend or withdraw the order assembling the court-martial¹⁰.

The following are not eligible to be members of a court-martial for the trial of a charge¹¹:

- 439 (a) the court administration officer¹²;
- 440 (b) an officer who, at any time between the date on which the preliminary charge¹³ was reported to the commanding officer of the accused and the date of the trial, has been the commanding officer of the accused¹⁴;
- 441 (c) the higher authority to whom the preliminary charge against the accused was referred¹⁵;
- 442 (d) any other officer who has investigated the subject matter of the charge against the accused¹⁶;
- 443 (e) any other officer or warrant officer who has held¹⁷, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused¹⁸.

Where, before the commencement of the trial, it appears to the court administration officer necessary or expedient in the interests of the administration of justice that a court-martial be dissolved, he may by order dissolve it¹⁹. After the commencement of the trial, the judge advocate may for the same reasons by order dissolve it²⁰. If, after the commencement of the trial, the president dies or is otherwise unable to attend, the court-martial must be dissolved²¹. Where a court-martial is dissolved the accused may be tried by another court²².

1 As to the court administration officer see para 449 note 10 ante.

2 I.e. the statements provided for in the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 8(2)(a).

3 'Commanding officer', in relation to the accused, means the officer who is for the time being in immediate command of the ship or naval establishment to which the accused belongs: *ibid* r 2.

4 See *ibid* r 10(1), (2). The commanding officer must serve the accused with: (1) the prosecution papers; (2) a form for the accused's notice of alibi; (3) the statements explaining legal representation and other rights; (4) a form for notifying the court administration officer of his accused's friend (see para 456 post); and (5) a form for acknowledgement of receipt: r 10(3). The commanding officer must also inform the accused of the effect of the Criminal Justice Act 1967 s 11 (as amended) (notice of alibi: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1384): Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 10(4). Although the Criminal Justice Act 1967 s 11 has been repealed for other purposes by the Criminal Procedure and Investigations Act 1996 s 74(1), (4), this does not affect its application to proceedings before courts-martial: s 74(3).

5 Naval Discipline Act 1957 s 53C(1) (s 53C added by the Armed Forces Act 1996 s 5, Sch 1 para 51); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 14 (amended by SI 2002/231). As to the prosecuting authority see para 316 ante.

6 As to the constitution of courts-martial see para 449 ante.

7 As to the judge advocate see para 453 post.

8 As to the Chief Naval Judge Advocate see para 445 ante.

9 Naval Discipline Act 1957 s 53C(2) (as added (see note 5 supra); and amended by the Armed Forces Act 2001 s 19, Sch 2 para 15).

10 Naval Discipline Act 1957 s 53C(3) (as added: see note 5 supra). This must be done in accordance with rules under s 58 (as amended): see para 448 ante.

11 *Ibid* s 53C(4) (as added: see note 5 supra). An officer or warrant officer is also not eligible to be a member of a court-martial if he serves, directly or indirectly under the command of the higher authority, the prosecuting authority or the court administration officer, or (unless he is the judge advocate) if he has a specified legal qualification: see the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 15 (amended by SI 2002/231).

12 Naval Discipline Act 1957 s 53C(4)(a) (as added: see note 5 supra).

13 'The preliminary charge' means the charge referred to higher authority by the commanding officer of the accused: *ibid* s 53C(5) (as added: see note 5 supra).

14 *Ibid* s 53C(4)(b) (as added: see note 5 supra).

15 *Ibid* s 53C(4)(c) (as added: see note 5 supra).

16 *Ibid* s 53C(4)(d) (as added: see note 5 supra).

17 *Ie* under the Naval Discipline Act 1957.

18 *Ibid* s 53C(4)(e) (as added (see note 5 supra); and amended by the Armed Forces Act 2001 s 19, Sch 2 para 15).

19 Naval Discipline Act 1957 s 56A(1) (s 56A added by the Armed Forces Act 1996 Sch 1 para 55).

20 See the Naval Discipline Act 1957 s 56A(2) (as added: see note 19 supra).

21 *Ibid* s 56A(3) (as added: see note 19 supra).

22 *Ibid* s 56A(4) (as added: see note 19 supra).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the

Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

452 Ordering of courts-martial

NOTE 4--Criminal Procedure and Investigations Act 1996 s 74(3) repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (ii) Officers of Courts-Martial/453. The judge advocate.

(ii) Officers of Courts-Martial

453. The judge advocate.

A judge advocate is appointed by or on behalf of the Chief Naval Judge Advocate¹ to be a member of a court-martial²; his name is notified by the court administration officer³ to the prosecutor and the accused⁴. The duties of the judge advocate are extensive and cover all aspects of the trial⁵. The judge advocate is responsible for ensuring that the trial is conducted in accordance with law⁶. Rulings and directions on questions of law (including questions of procedure and practice) must be given by the judge advocate⁷. He also has a duty to ensure that the accused, especially if he is not represented, does not suffer any disadvantage⁸. Any directions given by the judge advocate are binding on the court⁹.

Before the closing of the court for consideration of the finding, the judge advocate must sum up the evidence and advise the court upon the law relating to the case¹⁰. He must retire when the court is closed for consideration of the finding, and should further advice be required this must be given in open court¹¹.

The judge advocate is responsible for the due recording of the proceedings in the prescribed form and must certify the correctness of the transcript of proceedings¹².

1 As to the Chief Naval Judge Advocate see para 445 ante.

2 Naval Discipline Act 1957 s 53B(1) (s 53B added by the Armed Forces Act 1996 s 5, Sch 1 para 51). No person may be appointed as the judge advocate unless he is: (1) a person who has a five year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) an advocate in Scotland of at least five years' standing or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years; or (3) a member of the Bar of Northern Ireland of at least five years' standing: Naval Discipline Act 1957 s 53B(2) (as so added). No further requirements are specified in either the Naval Discipline Act 1957 or any rules made under it. In practice, the Chief Naval Judge Advocate will normally appoint a serving naval officer with the appropriate experience to act as judge advocate. This is in contrast to the arrangement for courts-martial ordered by the army or air force court administration officer, where the judge advocate will be a civilian appointed by the Judge Advocate General: see paras 445-447 ante.

3 As to the court administration officer see para 449 note 10 ante.

4 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 9.

5 As to the duties of the judge advocate generally see the Manual of Naval Law vol II Ch 19. In broad terms, the role of a judge advocate is similar to that of a Crown Court judge up to the point of the court convicting or acquitting an accused, albeit the process of sentencing is one in which both the judge advocate and the other court members participate (see paras 470-471 post).

6 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 29(1).

7 Naval Discipline Act 1957 s 53B(3) (as added: see note 2 supra). As to how these powers are to be exercised by the judge advocate when sitting alone see the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 30.

8 Ibid r 29(2). As to the judge advocate's general approach see also r 78, which specifies that in any circumstances not provided for by the Naval Discipline Act 1957 or the rules, such course is to be adopted as appears best calculated to do justice.

9 Naval Discipline Act 1957 s 53B(4) (as added: see note 2 supra).

10 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 62.

11 Ibid r 64(1), (2).

12 See ibid rr 29(3), 77(5).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (ii) Officers of Courts-Martial/454. The clerk of the court, provost marshal and officer of the court.

454. The clerk of the court, provost marshal and officer of the court.

A clerk of the court must be appointed by the court administration officer¹ to act at every court-martial². His role is to carry out the administrative and routine duties in connection with the trial, thus allowing the judge advocate to concentrate on his duties concerning law and practice³. At the trial the clerk administers the oath or affirmation to witnesses, reads any documents required to be read to the court and ensures that copies of exhibits or other documents are provided and kept as required. He assists the judge advocate generally, supervises the court recorder as required and ensures that civilian witnesses are provided with the necessary documentation to claim expenses⁴. After the trial, his duties include the release of a signal reporting the outcome of the trial, and, for example, ensuring that the necessary documents are provided to the custodial authority when a custodial sentence is awarded by the court⁵.

The court administration officer may appoint a provost marshal⁶. The provost marshal is personally responsible for taking charge of the accused, bringing him into court, for restraining him should that become necessary and for ensuring that any restrictions on the accused's liberty which have been ordered are complied with. If the accused is convicted of a recordable offence, the provost marshal ensures that fingerprints are taken after the court hearing.

An officer of the court may be appointed by the court administration officer⁷. His principal role is to ensure the smooth running of the court-martial, with particular responsibility for the control of witnesses and for access to, and clearing of, the court-room.

The court administration officer may also appoint persons to act as court recorder and interpreter⁸.

1 As to the court administration officer see para 449 note 10 ante.

2 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 16(1).

3 As to the duties of the clerk of the court generally see the Manual of Naval Law vol II Ch 20. Although it is nowhere specified who the clerk of the court should be, he will usually be a senior rating or warrant officer of the writer branch. As to the judge advocate see para 453 ante.

4 Ie under the Naval Discipline Act 1957 s 64(2) (as amended): see para 464 post.

5 See the Manual of Naval Law vol II Ch 20 art 2003.

6 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 16(2)(a). As to the provost marshal's duties generally see the Manual of Naval Law vol II Ch 20 art 2005. In many less serious cases a provost marshal will not be appointed. It is nowhere specified who the provost marshal should be, but if the accused is a rating, the provost marshal will often be a rating from the regulating branch. If the accused is an officer, the provost marshal will also be an officer. For the meaning of 'rating' see para 156 note 1 ante.

7 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 16(2)(c). As to the duties of an officer of the court see the Manual of Naval Law vol II Ch 20 art 2004. By convention the officer of the court will usually be a senior rating or a junior officer.

8 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 16(2)(b), (d).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (ii) Officers of Courts-Martial/455. The prosecutor.

455. The prosecutor.

Responsibility for prosecuting cases at court-martial lies with the naval prosecuting authority¹.

¹ See para 316 ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (ii) Officers of Courts-Martial/456. The accused's friend.

456. The accused's friend.

An accused who has been notified that he is to be tried by court-martial must be afforded a proper opportunity for preparing his defence¹. An accused is entitled to appoint a representative to act for him in connection with his court-martial; this representative has by tradition been known as the 'accused's friend', a title preserved in the rules². An accused may only be represented by a lawyer qualified in England, Wales, Scotland, Northern Ireland or an equivalent person in a Commonwealth country³. No other person is entitled to represent the accused, although he may choose to conduct his own defence. The accused's friend may be a serving officer or a civilian practitioner. The accused is required to inform the court administration officer⁴ of the name and address of his accused's friend as soon as practicable after he has been appointed⁵. Any right or responsibility which accrues to the accused⁶ (except pleading to a charge) may be exercised by the accused's friend on his behalf⁷. The accused must be allowed proper communication with his accused's friend⁸. The role of the accused's friend is the same as that of a defence solicitor or counsel in a civilian trial⁹.

It is for the accused to decide whom he wishes to represent him, and make the necessary arrangements with him. The accused may be eligible for legal aid, which for courts-martial is administered through the Ministry of Defence¹⁰.

1 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 13(1).

2 Ibid r 13(2).

3 See ibid r 13(6). As to the Commonwealth see COMMONWEALTH vol 13 (2009) PARA 701.

4 As to the court administration officer see para 449 note 10 ante.

5 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 13(4).

6 Ie by virtue of the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170 (as amended).

7 Ibid r 13(3).

8 Ibid r 13(5).

9 The general duties of the accused's friend and notes for his guidance are set out in the Manual of Naval Law vol II Ch 22.

10 See ibid vol II Ch 28. As to the Ministry of Defence see para 2 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 438 et seq.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iii) Proceedings before Trial/457. Application for trial by court-martial and the decision to prosecute.

(iii) Proceedings before Trial

457. Application for trial by court-martial and the decision to prosecute.

An allegation that a person subject to the Naval Discipline Act 1957¹ has committed an offence must be reported, in the form of a charge, to his commanding officer². The commanding officer may decide, having investigated the case, to refer the case to higher authority³ with a view to the individual being tried by court-martial. He is required to forward the charge-sheet, supporting evidence and other documentation. The decision to refer a case may be as a result of the individual opting for court-martial or may be because the commanding officer considers that the matter should be dealt with by court-martial⁴.

The higher authority must refer the case to the prosecuting authority⁵ unless he decides to refer the case back to the commanding officer with a direction to dismiss it or stay further proceedings or to allow the commanding officer to try the case⁶. This creates a presumption that the case will be referred, unless the higher authority is of the view that the service interest is best served by halting the prosecution, or the likely sentence is within the commanding officer's powers of punishment⁷. If the case is referred to the prosecuting authority, the higher authority will forward the charge-sheet, evidence and other supporting documentation⁸.

If the prosecuting authority considers that court-martial proceedings should be instituted, he may prefer any charge⁹, having satisfied himself that it passes the evidential sufficiency and service interest tests¹⁰. However, if the accused has elected for trial by court-martial, the prosecuting authority may not amend the charge or prefer additional charges unless the accused consents¹¹. The prosecuting authority may decide to discontinue proceedings¹² or not to prefer a charge, in which case he has the power to direct that the accused is not liable to be tried for the offence alleged¹³. If a charge is not preferred, or is discontinued, the commanding officer, on being notified of the decision, and if not directed otherwise, may try the accused summarily¹⁴. If an accused has elected for trial by court-martial, and the prosecuting authority wishes to amend the charge, he must refer it back to the commanding officer who will then deal with it as a fresh charge¹⁵.

If the prosecuting authority has preferred a charge against an accused to be tried at court-martial, he must send to the accused's commanding officer, and to the court administration officer¹⁶, a copy of the charge-sheet, a statement of the prosecution case, witness statements and other supporting documentation¹⁷. The court administration officer will then take the necessary preliminary steps to order a court-martial¹⁸.

1 As to the persons subject to the Naval Discipline Act 1957 see paras 306, 309 et seq ante.

2 Naval Discipline Act 1957 s 52B(1) (s 52B added by the Armed Forces Act 1996 s 5, Sch 1 para 13). For the meaning of 'commanding officer' see para 348 note 2 ante.

3 See the Naval Discipline Act 1957 s 52B(5)(b) (as added: see note 2 supra). As to the higher authorities, all of whom are flag officers, see the *Naval Summary Discipline Regulations 2002* reg 66. These regulations are not a statutory instrument. Each of the higher authorities will either have his own legal adviser or have ready access to legal advice when dealing with the case. As to a rating's option to apply for trial by court-martial see paras 348-349 ante.

4 For general guidance to commanding officers see the Manual of Naval Law vol II Ch 14.

5 As to the prosecuting authority see para 316 ante.

6 See the Naval Discipline Act 1957 s 52C (added by the Armed Forces Act 1996 Sch 1 para 13; and amended by the Armed Forces Act 2001 ss 17, 38, Sch 1 para 10, Sch 7 Pt 1).

7 For detailed guidance see the Manual of Naval Law vol II Ch 15. For the criteria for applying the 'service interest test' see Ch 15 art 1503.

8 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 4 (amended by SI 2000/2373).

9 See the Naval Discipline Act 1957 s 52I(4) (s 52I added by the Armed Forces Act 1996 Sch 1 para 16; and the Naval Discipline Act 1957 s 52I(4) amended by the Armed Forces Discipline Act 2000 s 13, Sch 2 para 2).-

10 See the Manual of Naval Law vol II Ch 16 art 1605.

11 Naval Discipline Act 1957 s 52I(8A) (s 52I as added (see note 9 supra); s 52I(8A) added by the Armed Forces Discipline Act 2000 Sch 2 para 2).

12 Naval Discipline Act 1957 s 52I(7)(c) (as added: see note 9 supra).

13 Ibid s 52I(12) (s 52I as added (see note 9 supra); and s 52I(12) substituted by the Armed Forces Discipline Act 2000 Sch 2 para 2).

14 See the *Naval Summary Discipline Regulations 2002* regs 63-65.

15 See the Naval Discipline Act 1957 s 52II (as added and amended); and para 316 ante. See also the *Naval Summary Discipline Regulations 2002* reg 63.

16 For the meaning of 'court administration officer' see para 449 note 10 ante.

17 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 7, 8.

18 See para 452 ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iii) Proceedings before Trial/458. Hearings for directions and pre-trial hearings.

458. Hearings for directions and pre-trial hearings.

The judge advocate¹ may request the court administration officer² to convene a hearing for directions, on his own motion or on the application of the prosecutor or accused³. The purpose of such a hearing, which will take place before the judge advocate in chambers, is for the judge advocate to deal with a wide range of legal, procedural and administrative matters, and for him to give directions⁴.

The judge advocate may request the court administration officer to convene a pre-trial hearing, again on his own motion or on the application of the prosecutor or accused⁵. The purpose of such a hearing, which is in open court, is for the judge advocate to make orders or rulings as to any question as to the admissibility of evidence and any other question of law, practice or procedure relating to the case⁶.

1 As to the judge advocate see para 453 ante.

2 As to the court administration officer see para 449 note 10 ante.

3 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 22(1).

4 See *ibid* rr 22-24, Sch 3, which set out the way a hearing for directions is ordered and conducted, and the matters which may be addressed. See also the guidance set out in the Manual of Naval Law vol II Ch 19. A court-martial being an ad hoc rather than a standing court, there is no other jurisdiction to conduct a preliminary hearing.

5 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 25(1). Such a hearing would usually (although not necessarily) immediately precede the trial of an accused, and allows matters of law to be dealt with by the judge advocate. This avoids the need for other court members to assemble and be sworn in, and then to withdraw whilst preliminary matters of law such as severance or admissibility are dealt with. See further paras 448-452 ante.

6 See *ibid* r 25(2), Sch 2. As to the way a hearing for directions is ordered and conducted, and the matters which may be addressed, see generally rr 25-27. See also the guidance set out in the Manual of Naval Law vol II Ch 23 art 2320.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/459. The preliminaries.

(iv) Trial, Finding and Sentence

459. The preliminaries.

In practical terms, proceedings usually start when the president¹ formally declares the court open. When the court, judge advocate², clerk of the court, the accused, the accused's friend, the prosecutor and the spectators³ are all assembled, the order assembling the court is read⁴. The accused is given the opportunity to object to the judge advocate, the president or other member, the clerk of the court or interpreter, and any objection is dealt with by the judge advocate⁵. If an objection to the president is allowed, the court is dissolved and another court ordered⁶. If an objection to the judge advocate, clerk of the court or interpreter is allowed, another is appointed; if an objection to a member is allowed, that member is usually replaced by the first of the officers nominated as spare members⁷. As soon as any objection has been dealt with, the judge advocate takes the oath, and then administers the oath to the president and members, the clerk of the court, any person under instruction, and any interpreter⁸. Legally, the trial of an accused commences once the last court member has been sworn⁹. Once the members have been sworn, no question as to the constitution of the court may be raised in the proceedings¹⁰.

1 As to the appointment of the president and members of the court-martial see para 449 ante. The president, who is not legally qualified, is responsible for conducting the trial in a manner befitting a court of justice and in accordance with the traditions of the Royal Navy: Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 28(1). The members of the court, other than the judge advocate, sit in order of seniority: see r 28(2)-(4).

2 As to the officers of courts-martial see paras 453-456 ante.

3 A court-martial must generally sit in open court, although it must be closed when deliberating on its finding or sentence and on any other matter arising out of the trial: see para 448 ante.

4 See the Naval Discipline Act 1957 s 59(1) (amended by the Armed Forces Act 1996 s 58(1), (2); and the Armed Forces Act 2001 s 19, Sch 2 para 17); and the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 31(2) (amended by SI 2002/231). The essentials of the order of procedure at a naval court-martial are laid down generally in the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170 (as amended), supplemented by more detailed guidance in the Manual of Naval Law vol II Ch 23 (which is amended on a regular basis). The procedure conforms in general to the procedure at a criminal trial in the Crown Court, as to which see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1232 et seq.

5 See the Naval Discipline Act 1957 s 59(2) (amended by the Armed Forces Act 1996 s 58(1), (3)); and the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 31(3), (4), (7).

6 Naval Discipline Act 1957 s 59(3) (substituted by the Armed Forces Act 1996 s 5, Sch 1 para 58(4)); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 31(8).

7 See the Naval Discipline Act 1957 s 59(4), (4A) (s 59(4) amended by the Armed Forces Act 1996 s 58(1), (5); and the Armed Forces Act 2001 s 19, Sch 2 para 17(1), (3); and the Naval Discipline Act 1957 s 59(4A) added by the Armed Forces Act 1996 Sch 1 para 58); and the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 31(4)-(6), (9), (10).

8 See the Naval Discipline Act 1957 s 60 (amended by the Oaths Act 1961 s 1(2), (3); the Administration of Justice Act 1977 ss 8(3), 32(4), Sch 5 Pt III; the Criminal Justice Act 1991 s 71, Sch 9 para 7; and the Armed Forces Act 1996 Sch 1 para 59); and the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 32, 33, Sch 4 (r 33 amended by SI 2002/231).

9 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 34(1). If, after the commencement of the trial, the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining to which the accused can be required to plead, he must dissolve the court: r 34(2).

10 Naval Discipline Act 1957 s 59(6) (amended by the Armed Forces Act 1996 Sch 1 para 58(8); the Armed Forces Act 2001 Sch 2 para 17; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). This provision is without prejudice to any power of the Courts-Martial Appeal Court or the reviewing authority in a case where it appears that a substantial miscarriage of justice has occurred by reason of the court not having been duly constituted: Naval Discipline Act 1957 s 59(6) (as so amended). As to the powers of the Courts-Martial Appeal Court see para 529 et seq post. As to the powers of the reviewing authority see para 473 et seq post.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/460. Jurisdiction, plea in bar of trial and other submissions.

460. Jurisdiction, plea in bar of trial and other submissions.

It may well be that any legal issues, including those relating to the jurisdiction of the court-martial, will have been dealt with already by the judge advocate at a pre-trial hearing¹. In any event, once the court is sworn in the judge advocate will read the heading of the charge-sheet to the accused and confirm that he admits to being that person and that his description in it is correct, and that he admits to being subject to the jurisdiction of the Naval Discipline Act 1957². The judge advocate will deal with any objections. The accused may also offer a plea in bar of trial³, make an application to sever charges or be tried separately from a co-accused⁴, object to a charge that it is not correct in law⁵, plead unfitness to stand trial⁶, or raise other legal issues which have not already been disposed of and can conveniently be raised at this stage. The judge advocate will usually deal with any matters raised in the absence of the court⁷.

1 See para 458 ante. As to the judge advocate see para 453 ante.

2 See the Manual of Naval Law vol II Ch 23 art 2310.15. See also the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 27(1)(a), 30, 34. As to the effect on jurisdiction of the time the offence was committed see para 304 ante.

3 See *ibid* rr 27(1)(c), 30. As to the pleas of *autrefois acquit* or *convict* see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1272. See also para 57 ante.

4 See *ibid* rr 27(1)(d), 30, 35, 40, 41. As to charges and joinder at court-martial generally see r 6, Sch 1. As to joinder generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1221 *et seq*.

5 See *ibid* rr 27(1)(b), 30, 40, 41.

6 See the Naval Discipline Act 1957 s 63(1)(a) (amended by the Criminal Procedure (Insanity) Act 1964 ss 7, 8(4), Sch 2 Pt II; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1265.

As from a day to be appointed, the provisions contained in the Naval Discipline Act 1957 s 63 (as amended) are to be substituted by the Armed Forces Act 1996 s 8, Sch 2 para 4, which will also introduce new provisions dealing with persons not guilty by reason of insanity or unfit to stand trial (see s 63A (prospectively added)); admission orders (see s 63B (prospectively added)); guardianship orders (see s 63C (prospectively added)); supervision and treatment orders (see s 63D (prospectively added)); and supplementary provisions (see s 63E (prospectively added)). At the date at which this volume states the law no such day had been appointed.

7 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 30.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

460 Jurisdiction, plea in bar of trial and other submissions

TEXT AND NOTES--As to the jurisdiction of the Court Martial see now the Armed Forces Act 2006 s 50; and PARA 451.

NOTE 6--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 Sch 11. Reference to ss 63A-63D should be to Naval Discipline Act 1957 ss 63A-63D. Naval Discipline Act 1957 s 63B amended: Mental Health Act 2007 s 15(3).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/461. Pleading to the charges.

461. Pleading to the charges.

After other preliminary issues have been dealt with¹, the judge advocate² reads out the charges to be tried³ and the accused is required to plead guilty or not guilty to each charge on which he is arraigned⁴. Where the court is empowered to make a special finding, the accused may plead guilty to the offence subject to the matters as would merit the special finding⁵.

If the plea of guilty is not accepted by the court, or if the accused refuses to plead, or does not plead intelligibly, the court must enter a plea of not guilty⁶.

The court will not accept a plea of guilty if it is not satisfied that the accused understands the nature of the charge or the effect of his plea, or if the judge advocate considers that the court should not accept the plea⁷.

1 As to the preliminaries see para 459 ante.

2 As to the judge advocate see para 453 ante.

3 At any time after the court has been sworn, but before the finding, the court may, in certain circumstances and subject to certain conditions, amend (or allow to be amended) the charge-sheet, or allow additional charges to be preferred: see the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 39-41.

4 Ibid r 36(1), (2).

5 Ibid rr 36(3), 63. As to special findings see para 469 post.

6 Ibid r 37(3).

7 Ibid r 37(2)(a), (b).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/462. Procedure on a plea of guilty.

462. Procedure on a plea of guilty.

Where the accused pleads guilty to all charges¹, or if no evidence is to be offered on any other charges to which he has pleaded not guilty, the prosecutor will address the court on the prosecution case², but first the judge advocate will warn the court that this does no more than summarise the case for the prosecution against the accused and that the accused may dispute some of the facts³. Having heard the prosecution opening, if the judge advocate is satisfied that the court may properly record a finding of guilty, the court may record such a finding⁴. The court will then move on to the procedure for sentencing⁵, unless there is a dispute of facts. If there is a dispute of facts following a guilty plea, and the prosecutor does not accept the factual basis on which the plea is made, the court may hear evidence and make a finding on the issue of fact⁶. Having made its finding, which is announced in open court by the president⁷, the court then moves on to the procedure for sentencing⁸.

1 If an accused pleads guilty to a charge, the judge advocate, if it appears necessary to him, and before the court accepts the plea, must satisfy himself that the accused understands: (1) the nature of the charge; (2) the general effect of the plea; and (3) the difference in procedure following pleas of guilty and not guilty: Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 37(1). As to the judge advocate see para 453 ante.

2 Ibid r 42(1)-(3). As to the prosecutor see para 316 ante.

3 See the Manual of Naval Law vol II Ch 23 art 2311.

4 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 42(4).

5 See para 470 post.

6 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 44(1), (2). The court sits in closed court when deliberating on its finding on the issue of fact and the judge advocate is not present and is not entitled to vote: r 44(3), (5).

7 See ibid r 44(4).

8 See para 470 post.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/463. Mixed pleas.

463. Mixed pleas.

Where the court has accepted pleas of guilty and not guilty on one charge-sheet, and the prosecutor¹ proceeds to the trial of any charge to which an accused has pleaded not guilty, then, unless the judge advocate² directs otherwise, the trial of any charge to which an accused has pleaded not guilty must proceed before the court considers any guilty plea³. The prosecutor must not, so far as is possible, address the court on any fact or lead evidence relating to the charge to which an accused has pleaded guilty, except where the fact or evidence relates also to a charge to which any accused has pleaded not guilty⁴. Before the prosecutor opens the case the judge advocate will usually give an explanation; the guilty pleas will be noted but not formally recorded. The judge advocate will remind the court in his summing up to disregard the charges to which the accused has pleaded guilty⁵. The trial on the charges to which the accused has pleaded not guilty will then proceed in the normal way⁶, and after a verdict is announced the court will then go on to deal with the charges to which the accused has pleaded guilty⁷.

1 As to the prosecutor see para 316 ante.

2 As to the judge advocate see para 453 ante.

3 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 43(1)-(3). It should be noted that, unlike procedure in the Crown Court, the tribunal of fact at a court-martial will be aware of other charges to which the accused has pleaded guilty when it decides his guilt on charges to which he has pleaded not guilty. This rule is designed to minimize the impact of this on the trial of the charges to which the accused has pleaded not guilty, and replaces the previous procedure, where the court would be told about the facts relating to all charges at the start of the trial.

4 Ibid r 43(4).

5 See ibid r 43(5); and the Manual of Naval Law vol II Ch 23 art 2310. The court may only record a finding of guilty if the judge advocate is satisfied that the court may properly record such a finding in respect of any charge to which an accused has pleaded guilty: Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 43(7).

6 See para 464 post.

7 See para 462 ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/464. Prosecution case on a plea of not guilty.

464. Prosecution case on a plea of not guilty.

After a plea of not guilty to any charge has been entered, the prosecutor¹ will address the court on the prosecution case², but first the judge advocate³ will warn the court that this does no more than summarise the case for the prosecution against the accused and that some or all the evidence will be in dispute⁴. The witnesses for the prosecution are called and give their evidence under oath⁵. In general, the ordinary criminal procedure is followed with witnesses examined, cross-examined and, if appropriate, re-examined⁶.

At the close of the case for the prosecution, the accused may make a submission of no case to answer⁷. This will be heard by the judge advocate sitting alone⁸. If the submission is allowed, the judge advocate will direct the court to find the accused not guilty of the charge to which the submission relates⁹. If the submission is not allowed, the court proceeds with the trial of the offence as charged¹⁰. The court may at any time after the close of the prosecution case find the accused not guilty of a charge, provided the prosecutor has been given the opportunity to address the court¹¹.

1 As to the prosecutor see para 316 ante.

2 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 46(1).

3 As to the judge advocate see para 453 ante.

4 See the Manual of Naval Law vol II Ch 23 art 2312.1.

5 As to procedure for the calling of witnesses and the evidence generally see the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 46-55; and the Manual of Naval Law art 2312. As to the calling of witnesses see also para 467 post; and CIVIL PROCEDURE vol 11 (2009) PARA 1003 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1401 et seq. Witnesses at courts-martial, whether or not subject to naval discipline, may be summoned by the court administration officer; if they are not subject to naval discipline, they are entitled to receive expenses: see the Naval Discipline Act 1957 s 64 (amended by the Armed Forces Act 1996 s 5, Sch 1 para 62; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the persons who are subject to the Naval Discipline Act 1957 see paras 306, 309 et seq ante. Witnesses before courts-martial are entitled to the same immunities and privileges as witnesses before the High Court in England: Naval Discipline Act 1957 s 64D (added by the Armed Forces Act 1996 s 5, Sch 1 para 63). As to privilege and immunity of witnesses see CIVIL PROCEDURE vol 11 (2009) PARA 970 et seq.

6 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1401 et seq.

7 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 56(1). As to the submission of no case to answer see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1313.

8 See *ibid* r 30.

9 *Ibid* r 56(2). The finding is announced in open court: see r 56(2).

10 *Ibid* r 56(3).

11 *Ibid* r 57.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/465. The defence case.

465. The defence case.

After the close of the case for the prosecution, the judge advocate¹ must satisfy himself that the accused understands: (1) that he may give evidence in his defence if he wishes, but he is not obliged to do so; (2) the consequences of choosing to remain silent at trial; (3) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecutor² and questioned by the court; and (4) that he may call witnesses on his behalf³. If the accused intends to call a witness to the facts of the case other than himself, he may make an opening address outlining the case for the defence before the evidence is given⁴. If the accused elects to give evidence then he must be called before any other witnesses for the defence, unless the judge advocate permits otherwise⁵. After the witnesses for the defence have given their evidence, the prosecutor may, with the leave of the judge advocate, call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have dealt with before the accused disclosed his defence or which the prosecution could not reasonably have foreseen⁶. If in the opinion of the judge advocate it is in the interests of justice to do so, the court may, at any time before the judge advocate begins to sum up, call a witness or recall a witness, or permit the parties to do the same⁷.

1 As to the judge advocate see para 453 ante.

2 As to the prosecutor see para 316 ante.

3 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 58(1). The judge advocate must ask the accused: (1) whether he intends to give evidence in his defence; (2) whether he intends to call any witnesses on his behalf; and (3) if he intends to call witnesses, whether they are witnesses to fact or to character: r 58(2).

4 Ibid r 58(3).

5 Ibid r 59. As to the defendant giving evidence in a criminal trial see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1408.

6 Ibid r 60.

7 Ibid r 55(1). If a witness is called or recalled under this rule, the parties to the proceedings may ask the witness such questions as may be allowed by the judge advocate: r 55(2).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/466. Power to compel attendance of witnesses not subject to naval discipline.

466. Power to compel attendance of witnesses not subject to naval discipline.

As from a day to be appointed¹, provision is made for the arrest of persons not subject to naval discipline² in order to compel their attendance as witnesses at courts-martial³. There are two circumstances where a warrant of arrest may be issued: (1) where it is perceived that such a person will not voluntarily attend to give his evidence⁴; and (2) where such a person has failed to attend in response to a witness summons⁵.

At any time before the commencement of a trial, the judicial officer⁶ may issue a warrant for the arrest⁷ of any such person in respect of whom the officer is satisfied on oath:

- 444 (a) that he is in the United Kingdom⁸ or any colony⁹;
- 445 (b) that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial¹⁰ in the United Kingdom or (as the case may be) in that colony¹¹;
- 446 (c) that he will not voluntarily attend as a witness or produce the document or other thing¹²; and
- 447 (d) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance¹³.

At any time after the commencement of the trial, these powers are exercisable by the judge advocate¹⁴.

A warrant for such a person's arrest¹⁵ may also be issued if he fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to attend¹⁶, provided that:

- 448 (i) the judge advocate¹⁷ is satisfied by evidence on oath that the person is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings¹⁸;
- 449 (ii) it is proved on oath or in such manner as may be prescribed¹⁹ that the person has been duly served with the summons and that any expenses to which he is entitled²⁰ have been paid or tendered²¹; and
- 450 (iii) it appears to the judge advocate that there is no just excuse for the failure²².

1 The Naval Discipline Act 1957 s 65A is added by the Armed Forces Act 2001 s 25(3), as from a day to be appointed under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 Naval Discipline Act 1957 s 65A(1)(a), (3)(a) (prospectively added: see note 1 supra). As to the persons subject to the Naval Discipline Act 1957 see paras 306, 309 et seq ante.

3 These provisions also apply, with modifications, to proceedings before a judicial officer and in relation to the summary appeal court: see *ibid* s 65A(5), (6) (prospectively added); and the text and notes 4-22 *infra*. As to the summary appeal court see para 359 et seq ante.

4 See *ibid* s 65A(1), (2) (prospectively added: see note 1 supra).

5 See *ibid* s 65A(3) (prospectively added: see note 1 supra).

6 Ibid s 65A(2) (prospectively added: see note 1 supra). 'Judicial officer' means a person appointed under s 47M (as added and amended) (see para 341 note 3 ante): s 135(1) (definition added by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 11(b)).

In the application of these provisions in relation to the summary appeal court (see note 3 supra), the person empowered to issue the warrant for arrest before the commencement of the hearing is a judge advocate appointed under the Naval Discipline Act 1957 s 52FG (as added) (see para 359 ante): see s 65A(2), (6)(c)(i) (prospectively added: see note 1 supra). In the application of these provisions to proceedings before a judicial officer (see note 3 supra), the person empowered to issue the warrant for arrest, whatever the stage in the proceedings, is the judicial officer: see s 65A(2), (5)(c) (prospectively added: see note 1 supra).

7 The warrant must be addressed to a constable, and must require the person in question to be brought before the court-martial at a time and place specified in the warrant: *ibid* s 65A(1), (4) (prospectively added: see note 1 supra).

8 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

9 Naval Discipline Act 1957 s 65A(1)(a) (prospectively added: see note 1 supra). As to the meaning of 'colony' see para 20 note 4 ante.

10 In the application of these provisions to proceedings before a judicial officer and in relation to the summary appeal court (see note 3 supra), any reference to a court-martial is to be construed as a reference to the proceedings, the judicial officer, or the summary appeal court, as the case may be, and the reference to a trial by court-martial is to be construed as a reference to proceedings before the judicial officer or the hearing of an appeal before the summary appeal court, as the case may be: see *ibid* s 65A(1)(a), (5)(a), (b), (6)(a), (b) (prospectively added: see note 1 supra).

11 Ibid s 65A(1)(a) (prospectively added: see note 1 supra).

12 Ibid s 65A(1)(b) (prospectively added: see note 1 supra).

13 Ibid s 65A(1)(c) (prospectively added: see note 1 supra).

14 Ibid s 65A(2) (prospectively added: see note 1 supra). As to the judge advocate see para 453 ante.

In the application of these provisions in relation to the summary appeal court (see note 3 supra), the warrant for arrest may be issued, after the commencement of the hearing, by the court: see the Naval Discipline Act 1957 s 65A(2), (6)(c)(ii) (prospectively added: see note 1 supra). In the application of these provisions to proceedings before a judicial officer (see note 3 supra), the person empowered to issue the warrant for arrest, whatever the stage in the proceedings, is the judicial officer: see s 65A(2), (5)(c) (prospectively added: see note 1 supra).

15 The warrant must be addressed to a constable, and must require the person in question to be brought before the court-martial at a time and place specified in the warrant: *ibid* s 65A(3), (4) (prospectively added: see note 1 supra).

16 Ibid s 65A(3)(a) (prospectively added: see note 1 supra).

17 In the application of these provisions to proceedings before a judicial officer and in relation to the summary appeal court (see note 3 supra), references to the judge advocate, in the context of the power to arrest a person who has failed to attend in response to a witness summons, are to be construed as references to the judicial officer or the summary appeal court, as the case may be: see *ibid* s 65A(3), (5)(e), (6)(e) (prospectively added: see note 1 supra).

18 Ibid s 65A(3)(b) (prospectively added: see note 1 supra).

19 As prescribed by rules under *ibid* s 58 (as substituted and amended): see s 65A(3)(c) (prospectively added: see note 1 supra). The rules made under s 58 (as substituted and amended) are the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170 (as amended), but at the date at which this volume states the law no amendment had been made to those rules prescribing any manner of proving service for these purposes.

In the application of these provisions to proceedings before a judicial officer (see note 3 supra), the rules which may prescribe the manner of proving service are those made under the Naval Discipline Act 1957 s 47N (as added and amended) (see para 347 ante): see s 65A(3)(c), (5)(d) (prospectively added: see note 1 supra). The rules made under the Naval Discipline Act 1957 s 47N (as added and amended) are the Naval Custody Rules 2000, SI 2000/2367, but at the date at which this volume states the law no amendment had been made to those rules prescribing any manner of proving service for these purposes. In the application of these provisions to proceedings before the summary appeal court (see note 3 supra), the rules which may prescribe the manner of proving service are those made under the Naval Discipline Act 1957 s 52FP (as added) (see para 359 ante):

see s 65A(3)(c), (6)(d) (prospectively added: see note 1 supra). The rules made under the Naval Discipline Act 1957 s 52FP (as added) are the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, but at the date at which this volume states the law no amendment had been made to those rules prescribing any manner of proving service for these purposes.

20 le by virtue of regulations made by the Defence Council: see the Naval Discipline Act 1957 s 65A(3)(c) (prospectively added: see note 1 supra). As to the Defence Council see para 2 ante. Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work.

In the application of these provisions to proceedings before a judicial officer or the summary appeal court (see note 3 supra), the rules governing entitlement to expenses are those made under s 47N (as added and amended) (see para 347 ante) (judicial officer) or s 52FP (as added) (see para 359 ante) (summary appeal court): s 65A(3)(c), (5)(d), (6)(d) (prospectively added: see note 1 supra). The rules in question are, respectively, the Naval Custody Rules 2000, SI 2000/2367, and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, but at the date at which this volume states the law no amendment had been made to those rules for these purposes.

21 Naval Discipline Act 1957 s 65A(3)(c) (prospectively added: see note 1 supra). The payment or tendering of expenses referred to in the text is stated to be within the meaning of s 65 (as amended): see s 65A(3)(c) (prospectively added: see note 1 supra). See also the Forms of Summons to Witnesses set out in the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, Sch 2.

In the application of these provisions to proceedings before a judicial officer or the summary appeal court (see note 3 supra), the rules governing the payment or tendering of expenses are those made under the Naval Discipline Act 1957 s 47N (as added and amended) (see para 347 ante) (judicial officer) or s 52FP (as added) (see para 359 ante) (summary appeal court): s 65A(3)(c), (5)(d), (6)(d) (prospectively added: see note 1 supra). The rules in question are, respectively, the Naval Custody Rules 2000, SI 2000/2367, and the Summary Appeal Court (Navy) Rules 2000, SI 2000/2370, but at the date at which this volume states the law no amendment had been made to those rules for these purposes.

22 Naval Discipline Act 1957 s 65A(3)(d) (prospectively added: see note 1 supra).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/467. Misconduct in relation to the court.

467. Misconduct in relation to the court.

Misconduct in relation to the court by a person subject to the Naval Discipline Act 1957¹ who is summoned or ordered to attend before a court-martial is liable to be punished summarily by the court-martial, or by a separate court-martial, or by his commanding officer². Where a civilian who is summoned to attend as a witness fails to comply with the summons³, or is guilty of certain misconduct⁴ in relation to a court-martial, or does any other act in relation to a court-martial which, if the court were a court of law having power to commit for contempt, would be punishable as contempt of that court⁵, the president⁶ may certify the offence to any court of law having power to commit for contempt with jurisdiction in the place where the offence was committed or where the offender is to be found, and the court of law may deal with the offender in any manner in which it could have dealt with him had he committed the offence in relation to that court⁷.

1 As to the persons who are subject to the Naval Discipline Act 1957 see paras 306, 309 et seq ante.

2 See the Naval Discipline Act 1957 s 38 (as amended); and para 411 ante. As to what constitutes punishable misconduct in relation to a court-martial see para 411 ante; and as to summary punishment see para 348 et seq ante.

3 Naval Discipline Act 1957 s 65(1)(a). Such a failure to comply cannot be dealt with unless any expenses to which the witness is entitled in respect of attendance have been paid or tendered: see s 65(3).

4 Naval Discipline Act 1957 s 65(1)(b). As to the forms of misconduct see s 38(1)(b)-(f) (as amended); and para 411 ante.

5 Ibid s 65(1)(c). See generally CONTEMPT OF COURT.

6 As to the president of the court-martial see para 449 ante.

7 Naval Discipline Act 1957 s 65(1), (2). As to contempt of courts-martial see also CONTEMPT OF COURT vol 9(1) (Reissue) para 457.

These provisions also apply to the summary appeal court: see s 65(5), (6) (added by the Armed Forces Discipline Act 2000 ss 10, 25, Sch 1 para 9, Sch 3 para 7). As to the summary appeal court see para 359 et seq ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/468. Closing speeches by prosecution and defence; advice and summing up by the judge advocate.

468. Closing speeches by prosecution and defence; advice and summing up by the judge advocate.

After the evidence has been given, the prosecutor¹ and the accused may each, in that order, make a closing address to the court². However, where the accused is not represented and has called in person no witnesses other than himself, the prosecutor may not make a closing address except with the leave of the judge advocate³. After the closing addresses, the judge advocate will direct the court upon the law relating to the case and summarise the evidence⁴.

1 As to the prosecutor see para 316 ante.

2 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 61(1), (2). Where two or more accused are represented by the same accused's friend, he may make only one closing address: r 61(3). As to the accused's friend see para 456 ante.

3 Ibid r 61(4). As to the judge advocate see para 453 ante.

4 Ibid r 62.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/469. Finding.

469. Finding.

After the summing up¹, the judge advocate² withdraws and the court closes to deliberate on its finding on each charge³. If, while deliberating, the court requires further advice from the judge advocate, it must suspend its deliberations and seek and be given such advice in open court⁴. The court may separate for reasonable periods unless the judge advocate directs that in the interests of justice the court is not to separate until the finding has been reached⁵. The finding of a court-martial and any sentence awarded are determined by a majority of the votes of the members of the court⁶. When voting, the vote of each member of the court on each charge must be given orally in reverse order of seniority⁷. In the case of an equality of votes on the finding, the accused must be acquitted⁸. The findings of the court must be recorded in writing and signed by the president and each member of the court notwithstanding any minority vote⁹.

When the court re-opens the president transmits the finding sheet to the judge advocate¹⁰. If the judge advocate is of the opinion that the finding is contrary to the law, he must direct the court on the findings which are open to it, and the court must retire and reconsider its findings¹¹. When the judge advocate has countersigned the findings of the court, the finding on each charge is announced in open court by the judge advocate¹². If the finding is not guilty on all charges, and there are no guilty pleas to deal with, the hearing is concluded by the judge advocate dissolving the court and the president formally announcing the conclusion of the trial¹³. Where there is a finding of guilty on any charge, or where the accused has pleaded guilty to any charge, the court proceeds to consider sentence¹⁴.

The court may reach a special finding¹⁵, if the judge advocate has previously directed it on this, after allowing the prosecution and the accused to address him on this matter¹⁶. A special finding, that is, a finding of guilty subject to exceptions or variations specified in the finding, may be reached where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of the like offence as that charged, if it appears to the judge advocate that that the difference is not so material as to have prejudiced the accused¹⁷. A special finding may also be reached by the court convicting for a mitigated offence¹⁸ or an alternative offence¹⁹.

A person charged with an attempt to commit any offence may be found guilty notwithstanding proof that he actually committed the offence²⁰.

Provision is made for a finding of insanity²¹.

¹ See para 468 ante.

² As to the judge advocate see para 453 ante.

³ Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 64(1).

⁴ Ibid r 64(2).

⁵ Ibid r 64(3).

⁶ Naval Discipline Act 1957 s 62(1) (amended by the Armed Forces Act 1996 s 5, Sch 1 para 61(2)). The judge advocate is not entitled to vote on the finding: Naval Discipline Act 1957 s 62(1A) (added by the Armed Forces Act 1996 Sch 1 para 61(3)).

⁷ Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 64(4). As to the members of the court see para 449 ante.

8 Naval Discipline Act 1957 s 62(2).

9 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 65(1).

10 See *ibid* r 65(1).

11 See *ibid* r 65(2).

12 Naval Discipline Act 1957 s 62(3) (amended by the Armed Forces Act 1996 Sch 1 para 61(4)); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 65(3).

13 *Ibid* r 73.

14 As to the procedure for sentencing see para 470 post.

15 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 63.

16 See *ibid* r 63(4), (5).

17 *Ibid* r 63(1)(a), (2).

18 It is a finding in accordance with the Naval Discipline Act 1957 s 67. Where the punishment for any offence under the Naval Discipline Act 1957 depends upon the intent with which or the circumstances in which the offender acts, and any person is charged with committing that offence with an intent or in circumstances involving the higher degree of punishment, he may be found guilty of committing that offence without that intent, or in circumstances involving the lower degree of punishment, as the case may be: s 67.

19 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 63(1)(b), (c). The power to convict of an alternative offence is contained in the Naval Discipline Act 1957 s 68. Where a person is charged with an offence under any provision of the Naval Discipline Act 1957 other than s 42 (as amended) (civil offences: see para 422 ante), and it is not proved that he committed that offence but is proved that he committed any other such offence, being: (1) an attempt to commit the offence charged; or (2) an offence of the same class as the offence charged and not involving greater punishment, he may be found not guilty of the offence charged but guilty of that other offence: s 68(1). Where a person is charged with a civil offence under s 42 (as amended) (see para 422 ante) and it is not proved that he committed that offence but is proved that he committed any other civil offence of which, if he had been tried by a civil court for committing the first-mentioned offence in England, he might have been found guilty, he may be convicted of an offence under s 42 (as amended) in respect of the commission of that other civil offence: s 68(2). For the meaning of 'civil offence' see para 422 note 2 ante. As to powers to convict of an offence other than that charged see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1335.

20 *Ibid* s 69. See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 82.

21 See *ibid* s 63 (amended by the Criminal Procedure (Insanity) Act 1964 ss 7, 8(4), Sch 2 Pt II; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As from a day to be appointed, the Naval Discipline Act 1957 s 63 (as amended) is to be substituted by the Armed Forces Act 1996 s 8, Sch 2 para 4. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 31.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

469 Finding

NOTE 29--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 s 58(2), Sch 11.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/470. Sentence.

470. Sentence.

Before the court proceeds to deliberate on the sentence, the accused may request the court to take into consideration any other offences committed by him of a similar nature to that of which he has been found guilty¹. The prosecutor will address the court on any matters concerning restitution and compensation². Where practicable the court will take evidence of³:

- 451 (1) the accused's age and rank⁴;
- 452 (2) the accused's service certificate (or equivalent)⁵;
- 453 (3) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled⁶;
- 454 (4) particulars of previous convictions⁷;
- 455 (5) particulars of any formal police caution administered to the accused⁸;
- 456 (6) particulars of the length of time he has been in custody awaiting trial⁹;
- 457 (7) details of the accused's pay, terminal benefits and future pension entitlements¹⁰; and
- 458 (8) whether the accused elected for trial by court-martial¹¹.

The court will also be provided with a copy of any pre-sentence report concerning the accused which has been prepared¹².

The accused may: (a) request any of his service records to be produced; (b) give evidence on oath and call witnesses in mitigation of the sentence and as to his character; (c) produce any document or report; and (d) address the court in mitigation of sentence¹³.

The court (including the judge advocate) then sits in closed court to deliberate on sentence¹⁴. This is normally achieved by the court remaining in the court-room whilst others are cleared. The clerk of the court and any person under instruction are permitted to be present¹⁵. When the president and members of the court vote, their votes are given orally in reverse order of seniority¹⁶. The court must award one sentence in respect of all the offences of which the accused has been found guilty and any offences taken into consideration¹⁷. The sentence must be recorded in writing, dated and signed by the president and each member of the court, including the judge advocate, notwithstanding any minority vote¹⁸.

The court will be re-opened for the court to announce its sentence. The judge advocate announces the sentence on behalf of the court¹⁹, and either the president or the judge advocate will announce the reasons for the sentence²⁰.

The hearing is concluded by the judge advocate dissolving the court and the president formally announcing the conclusion of the trial²¹.

1 See the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 69.

2 See the Manual of Naval Law vol II Ch 23 art 2311.9.

3 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 67(1), (2). Unless the accused requires otherwise, the matters referred to in heads (1)-(8) in the text need not be adduced in compliance with the strict rules of evidence: r 67(3). See generally CIVIL PROCEDURE. As to rules of evidence in proceedings before courts-martial see the Naval Discipline Act 1957 s 64A (ss 64A-64C added by the Armed Forces Act 1996 s 5, Sch 1 para 63). As to proofs at courts-martial by written statement see the Naval Discipline Act 1957 s 64B (as so added). As to proof of service facts and records see s 64C (as so added).

- 4 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 67(2)(a).
- 5 Ibid r 67(2)(b).
- 6 Ibid r 67(2)(c).
- 7 Ibid r 67(2)(d). A record of antecedents signed by the accused may be accepted in evidence by the court under r 67(2)(d) where the accused has admitted that he has been found guilty of each offence listed in the record and has had explained to him the purpose for which such admission was sought: r 67(5).
- 8 Ibid r 67(2)(dd) (added by SI 2000/2373).
- 9 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 67(2)(e).
- 10 Ibid r 67(2)(f).
- 11 Ibid r 67(2)(g) (added by SI 2000/2373).
- 12 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, rr 66, 67(4).
- 13 See *ibid* r 68.
- 14 Ibid r 70(1). In relation to the sentence available, the powers of the court are restricted to summary powers when the accused has elected for trial by court-martial: see the Naval Discipline Act 1957 s 62ZA (added by the Armed Forces Discipline Act 2000 s 12(3)). As to the scale of punishments generally see para 424 ante. As to civilians and young offenders see also paras 430, 432 ante. Further guidance is set out in the Manual of Naval Law vol II Chs 24, 25.
- 15 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 70(1). As to the clerk of the court see para 454 ante.
- 16 Ibid r 70(3). The president votes last and the judge advocate votes immediately before him: r 70(4). In the case of an equality of votes on sentence, the president has the casting vote: r 70(5). As to the constitution of the court see para 449 ante. As to the judge advocate see para 453 ante.
- 17 Ibid r 70(2). This is subject to any directions as to deductions from pay: see r 70(2), (6). Where two or more accused are tried separately by the same court upon charges arising out of the same circumstances, the court may, if the judge advocate is of the opinion that the interests of justice so require, postpone its deliberation upon the sentence to be awarded to any one or more of such accused until it has recorded its findings in respect of all the accused: r 71.
- 18 Ibid r 72(1).
- 19 Ibid r 72(2).
- 20 Ibid r 72(3).
- 21 Ibid r 73. As from a day to be appointed, the Attorney General may, with the leave of the Courts-Martial Appeal Court, refer a case to that court for review of the sentence, if the offence is a civil offence under the Naval Discipline Act 1957 s 42 (as amended) (see para 422 ante) and it appears to him that the sentence has been unduly lenient: see ss 71AB, 71AC (both prospectively added by the Armed Forces Act 2001 s 21(2)). At the date at which this volume states the law no such day had been appointed. As to the Courts-Martial Appeal Court see para 529 et seq post. As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529 et seq.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

470 Sentence

NOTE 21--The Armed Forces Act 2006 s 273 now gives the Attorney General the power to refer a case to the Court Martial Appeal Court if he considers that the sentence passed by the Court Martial in respect of the offence is unduly lenient. See also the Armed Forces (Review of Court Martial Sentence) Order 2009, SI 2009/1168. Where the Court Martial Appeal Court has concluded its review of a case under the Armed Forces Act 2006 s 273, the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed in the proceedings: see s 274. As to the power of the Secretary of State to make provision by regulations with respect to references under ss 273 and 274, see s 275; and as to the regulations so made, see the Armed Forces (Review of Court Martial Sentence) (Supplementary Provision) Regulations 2009, SI 2009/1169.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (iv) Trial, Finding and Sentence/471. Orders for restitution and compensation.

471. Orders for restitution and compensation.

Where a person has been convicted by court-martial or summary trial of unlawfully obtaining any property, whether by stealing, handling it or otherwise, an order for restitution or compensation may be made¹. Such an order may be made in any case by the Defence Council², and, where the offender has been tried by court-martial, it may be made by the court or, where the offender has been tried summarily³, it may be made by the officer in command of the ship or establishment to which he belongs⁴.

Any property so obtained found in the accused's possession, or any other property, other than money, which he has obtained by the conversion or exchange of any of the property unlawfully obtained, may be ordered to be repaid, restored or delivered to the apparent owner⁵ and, in so far as neither the property unlawfully obtained nor property of equivalent value in respect of which an order for delivery may be made is found in the offender's possession, he may be ordered to pay such a sum as or towards compensation as appears just⁶. Similarly, an order for payment in compensation, or an order for the return by the offender of property he has received in exchange for goods unlawfully obtained, may be made in favour of any person who took goods in exchange, purchased them or took them in pawn not knowing them to have been unlawfully obtained, provided the property so disposed of is restored to its apparent owner⁷.

Any sum ordered to be paid by way of compensation may be ordered to be paid out of money found in the offender's possession or by means of deduction from his pay⁸.

An order for restitution or compensation must be suspended⁹ until the expiration of the period prescribed for an appeal to be lodged and, if an appeal is lodged, until the appeal is finally determined¹⁰, except in so far as it is certified by the authority by whom the order was made that the title to the property is not in dispute¹¹.

1 Naval Discipline Act 1957 s 76(1) (amended by the Theft Act 1968 s 33(2), Sch 2 Pt II; the Armed Forces Act 1971 s 77(1), Sch 4 Pt I; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). The same power applies to offences taken into consideration: see the Naval Discipline Act 1957 s 76(1A) (added by the Armed Forces Act 1976 s 14, Sch 7 para 3).

2 As to the Defence Council see para 2 ante.

3 As to summary trial see paras 348-352 ante.

4 Naval Discipline Act 1957 s 76(6) (amended by the Armed Forces Act 1996 ss 5, 35(2), Sch 1 para 89, Sch 7 Pt I; the Armed Forces Act 2001 s 38, Sch 7 Pt I; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

5 Naval Discipline Act 1957 s 76(1)(a), (b) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). An order for restitution or compensation does not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid: see the Naval Discipline Act 1957 s 76(7).

6 Ibid s 76(1)(c) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). See note 5 supra.

7 See the Naval Discipline Act 1957 s 76(2), (3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). See note 5 supra.

8 Naval Discipline Act 1957 s 76(4). As to the award of the punishment of stoppages by way of compensation see para 424 ante.

9 During any period of suspension, unless the property or money is in the custody of the Registrar of the Courts-Martial Appeal Court, the authority who made the order must cause it to be kept in safe custody for the period during which the order is suspended: see *ibid* s 77(3) (amended by the Courts-Martial (Appeals) Act 1968 ss 46(3)(b), 49, 58, Sch 4); and the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 20(1).

10 Naval Discipline Act 1957 s 77(1) (amended by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; the Armed Forces Act 1976 s 14, Sch 7 para 4; and the Armed Forces Act 2001 s 38, Sch 7 Pt 1). Where an order is suspended it does not take effect if the conviction is quashed on appeal: see the Naval Discipline Act 1957 s 77(1). The Courts-Martial Appeal Court may annul or vary an order even though a conviction in respect of which it was made is not quashed: see s 77(2), (5) (s 77(2) amended, and s 77(5) added, by the Armed Forces Act 1976 Sch 7 para 4).

11 See the Naval Discipline Act 1957 s 77(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

471 Orders for restitution and compensation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 9--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (v) Post-trial Matters/472. Procedure following trial.

(v) Post-trial Matters

472. Procedure following trial.

A transcript of the proceedings, certified by the judge advocate¹, is made as a record of proceedings and transmitted to the court administration officer² and by the latter to the Defence Council³. A person who has been charged before a court-martial is entitled on application to the Defence Council within five years of the conclusion of the proceedings to receive a copy of the record⁴, subject to payment of such a fee, if any, not exceeding the cost of making the copy, as the Defence Council may require⁵. Personal representatives of persons who have been so charged are also entitled to a copy of the record⁶. If the Defence Council certifies that it is necessary for reasons of security that the proceedings should not be disclosed, the applicant is not entitled to a copy⁷.

1 As to the judge advocate see para 453 ante.

2 As to the court administration officer see para 449 note 10 ante.

3 Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 77. See also the Naval Discipline Act 1957 s 66(1) (amended by the Armed Forces Act 1996 s 5, Sch 1 para 88; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). As to the Defence Council see para 2 ante.

4 This right does not extend to so much of the record as relates only to a charge of which the applicant was found not guilty: Naval Discipline Act 1957 s 66(3A) (added by the Armed Forces Act 1981 s 7(3)).

5 Naval Discipline Act 1957 s 66(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). Where a court-martial imposes a fine or makes a compensation order against a parent or guardian (see para 438 ante), that parent or guardian has the same right to receive a copy of the proceedings: see the Naval Discipline Act 1957 s 66A(1), (5) (s 66A added by the Armed Forces Act 1981 s 8(3)). This right is in addition to those under the Naval Discipline Act 1957 s 66(2), (3) (as amended) (see the text and note 6 infra): s 66A(3) (as so added).

6 Ibid s 66(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). This right arises if the person charged dies within the period of five years, but the personal representatives must make the application within one year of the death: see the Naval Discipline Act 1957 s 66(3) (as so amended). As to the like right of personal representatives of a parent or guardian see s 66A(2) (as added: see note 5 supra).

7 See ibid s 66(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); and the Naval Discipline Act 1957 s 66A(4) (as added: see note 5 supra).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (v) Post-trial Matters/473. Petitions, review and appeals to the Courts-Martial Appeal Court.

473. Petitions, review and appeals to the Courts-Martial Appeal Court.

Where a court-martial has found the accused guilty of any offence, the accused may, before the end of the prescribed period¹, present a petition to the Defence Council² against finding or sentence³. Whether or not a petition is presented, the reviewing authority⁴ will review any finding of guilt made, and sentence passed, by a court-martial⁵. Where the trial has been contested, and in other cases where significant points of law are raised, the reviewing authority will normally receive advice from the Judge Advocate of the Fleet⁶.

A person convicted by court-martial may, with the leave of the Courts-Martial Appeal Court, appeal to that court against his conviction and against any sentence (not being a sentence fixed by law) passed on him for the offence for which he was convicted⁷.

1 The prescribed period is 28 days following the day on which sentence was announced: Naval Discipline Act 1957 s 70(8) (s 70 substituted by the Armed Forces Act 1996 s 16, Sch 5 para 9); Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 74(1).

2 As to the Defence Council see para 2 ante.

3 Naval Discipline Act 1957 s 70(1) (as substituted: see note 1 supra). As to the procedure for submitting a petition see the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 74; and the Manual of Naval Law vol II Ch 27.

4 The review may be carried out by the Defence Council or (more usually) by an officer to whom powers are delegated: see the Naval Discipline Act 1957 s 70(5) (as substituted: see note 1 supra).

5 Ibid s 70(2) (as substituted: see note 1 supra). The review should begin as soon as practicable after the presentation of the petition or, if no petition is presented, after the period in which the petition must be presented: s 70(3) (as substituted: see note 1 supra). Where an application for leave to appeal to the Courts-Martial Appeal Court against a finding or sentence has been made before the review of the finding or sentence has been completed, the reviewing authority must complete the review as soon as is practicable; but if leave to appeal is granted before the review has been completed, the authority must cease considering the review: s 70(4) (as substituted: see note 1 supra).

6 See para 445 ante. See also the Manual of Naval Law vol II Ch 27 art 2701.2.

7 Courts-Martial (Appeals) Act 1968 s 8(1) (amended by the Armed Forces Act 1971 s 73(2); and the Armed Forces Act 1996 s 17(2)(a)).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

473 Petitions, review and appeals to the [Court Martial] Appeal Court

TEXT AND NOTE 7--Courts-Martial (Appeals) Act 1968 s 8(1) amended to refer to the Court Martial Appeal Court: Armed Forces Act 2006 Sch 8 para 7.

The reference to a sentence fixed by law does not include a reference to an order made under the Criminal Justice Act 2003 s 269(2) or (4) (see PRISONS vol 36(2) (Reissue) PARA 621) in relation to a life sentence (as defined in s 277) that is fixed by law: Courts-Martial (Appeals) Act 1968 s 8(1ZA) (added by 2003 Act s 271(2)).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (v) Post-trial Matters/474. Reviewing authority's powers.

474. Reviewing authority's powers.

The reviewing authority¹ has the power, in so far as the review is a finding of guilt, to: (1) quash that finding and, if the sentence relates only to that finding, quash the sentence passed in consequence of that finding; (2) substitute a finding² if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding, and, where another finding is so substituted, the authority may pass any such sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) open to the court-martial on making such a finding as appears proper³. The power of the Courts-Martial Appeal Court to order on appeal a retrial by court-martial following the quashing of a conviction applies, with necessary modifications, to the review of findings by the Defence Council⁴.

In so far as the review is of a sentence, the authority may quash the sentence or substitute a sentence (not being, in the opinion of the authority, more severe than the sentence originally passed) which was open to the court-martial⁵. Where it appears to the reviewing authority that the court-martial, in sentencing the accused, exceeded or erroneously exercised its powers to take other offences into consideration, the authority must (whether or not substituting a different sentence or remitting or commuting punishment) annul the taking into consideration of the other offence or offences in question and any orders dependent on it, and where the authority does so the offence or offences must be treated for all purposes as not having been taken into consideration⁶.

Any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, must be treated for all purposes as having been made or passed by the court, and must be promulgated and has effect as from the date of promulgation⁷.

1 As to the reviewing authority see para 473 text and note 4 ante.

2 The substituted finding may be: (1) any finding of guilt which could have been validly made by the court-martial on the charge before it; (2) if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge: Naval Discipline Act 1957 s 71(3) (s 71 substituted by the Armed Forces Act 1996 s 16, Sch 5 para 10).

3 Naval Discipline Act 1957 s 71(1), (2) (as substituted: see note 2 supra).

4 See *ibid* s 71A (added by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; and amended by the Armed Forces Act 1996 Sch 5 para 11). As to the powers of the Courts-Martial Appeal Court to authorise retrial see para 549 post.

5 Naval Discipline Act 1957 s 71(4) (as substituted: see note 2 supra). In reviewing a sentence, the authority may: (1) revoke an order made by the court under s 89A(1) (as added) (see para 477 ante); (2) remit in whole or part any punishment awarded by the court; (3) commute any such punishment for one or more punishments provided by the Naval Discipline Act 1957, being less than the punishment commuted: s 71(5) (as so substituted).

6 *Ibid* s 71(6) (as substituted: see note 2 supra).

7 *Ibid* s 71(7) (as substituted: see note 2 supra).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/ (v) Post-trial Matters/475. Costs.

475. Costs.

As from a day to be appointed¹, the Secretary of State² may by regulations³ make provision empowering courts-martial, in any case where the court is satisfied that one party to proceedings for an offence under any of the service discipline Acts⁴ has incurred costs⁵ as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs⁶. In any proceedings for an offence under any of the service discipline Acts, a court-martial may disallow, or (as the case may be) order the legal or other representative⁷ concerned to meet, the whole of any wasted costs⁸ or such part of them as may be determined in accordance with regulations⁹.

1 The Armed Forces Act 2001 ss 26-28 are to be brought into force as from a day to be appointed by order under s 39(2), but at the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 The regulations must provide that a person against whom an order is made by a court-martial under the regulations may appeal to the Courts-Martial Appeal Court: Armed Forces Act 2001 s 26(3)(a) (not yet in force: see note 1 supra). The regulations may, in particular: allow the making of an order as to the payment of costs at any time during the proceedings; make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 or under any legal aid scheme operated by any of Her Majesty's forces; make provision as to the account to be taken of such an order in the making of any other order as to costs in respect of the proceedings; and make provision as to appeals against orders made by virtue of the regulations: Armed Forces Act 2001 s 26(2)(a)-(c), (e) (not yet in force: see note 1 supra). As to the Courts-Martial Appeal Court see para 529 et seq post. As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

4 As to the service discipline Acts see para 302 ante.

5 Where any of Her Majesty's forces incurs costs in respect of the exercise by the prosecuting authority of its functions as a party to proceedings under the service discipline Acts, those costs are taken for these purposes to have been incurred by the prosecuting authority (Armed Forces Act 2001 s 28(1) (not yet in force: see note 1 supra)), although regulations under s 26 (not yet in force) or s 27 (not yet in force) may make provision as to the costs incurred by any of Her Majesty's forces which are or are not to be taken for the purposes of that provision to have been incurred by the prosecuting authority and as to the person to whom, or the account into which, any payment in respect of costs incurred by the prosecuting authority is to be made (s 28(2) (not yet in force: see note 1 supra)). For these purposes, 'the prosecuting authority' means the prosecuting authority appointed under the Army Act 1955 s 83A, the Air Force Act 1955 s 83A, or the Naval Discipline Act 1957 s 52H (all as added), as the case may be: Armed Forces Act 2001 s 28(3) (not yet in force: see note 1 supra). As to the naval prosecuting authority see para 316 ante. As to the army and air force prosecuting authorities see para 315 ante.

6 Ibid s 26(1) (not yet in force: see note 1 supra).

7 For these purposes, 'legal or other representative', in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or a prosecuting officer appointed under the Army Act 1955 s 83C, the Air Force Act 1955 s 83C, or the Naval Discipline Act 1957 s 52J (all as added), as the case may be: Armed Forces Act 2001 s 27(3) (not yet in force: see note 1 supra). As to the naval prosecuting officers see para 316 ante. As to the army and air force prosecuting officers see para 315 ante.

8 I.e. any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative, or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay: ibid s 27(3) (not yet in force: see note 1 supra).

9 Ibid s 27(1)(a) (not yet in force: see note 1 supra). Such regulations must provide that a legal or other representative against whom action is taken by a court-martial under these powers may appeal to the Courts-Martial Appeal Court: s 27(2)(a) (not yet in force: see note 1 supra). 'Regulations' means regulations made by the Secretary of State: s 27(3) (not yet in force: see note 1 supra).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

475 Costs

TEXT AND NOTES--In exercise of his powers under the Armed Forces Act 2001 ss 26-28, the Secretary of State has made the Armed Forces (Proceedings) (Costs) Regulations 2009, SI 2009/993.

TEXT AND NOTES 1-6--Armed Forces Act 2001 s 26(1)-(3) amended: Armed Forces Act 2006 Sch 16 para 192.

TEXT AND NOTE 1--Day now appointed: SI 2005/2861.

NOTE 3--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

NOTE 5--Armed Forces Act 2001 s 28(1), (2) amended, s 28(3) repealed: Armed Forces Act 2006 Sch 16 para 194, Sch 17.

TEXT AND NOTES 7-9--Armed Forces Act 2001 s 27(1), (2) amended: Armed Forces Act 2006 Sch 16 para 193(2), (3).

NOTE 7--Definition of 'legal or other representative' amended: Armed Forces Act 2006 Sch 16 para 193(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(vi) Treatment and Execution of Sentence/476. Commencement and duration of sentence.

(vi) Treatment and Execution of Sentence

476. Commencement and duration of sentence.

A term of imprisonment or detention or a custodial order begins to run from the beginning of the day on which the sentence is awarded¹ unless:

- 459 (1) the Courts-Martial Appeal Court directs that the sentence is to begin to run from the day on which it dismisses an application for leave to appeal, which the court is empowered to do if it considers the application to have been frivolous or vexatious²;
- 460 (2) a sentence of imprisonment is passed on a person who is already serving a term of imprisonment, or a sentence of detention is passed on a person already serving a term of detention, and the court or officer directs the latter sentence to run from the completion of the former³;
- 461 (3) a person sentenced to imprisonment is further sentenced summarily to imprisonment by the court for an offence in relation to that court⁴, or in similar circumstances a person sentenced to detention is further sentenced summarily to detention, and the court orders that the two sentences are to be served consecutively⁵;
- 462 (4) a person is convicted by court-martial of two or more civil offences for which imprisonment may be awarded and the court awards by its sentence for any of those offences a term of imprisonment which is to run from the expiry of a term awarded for any other of those offences⁶; or
- 463 (5) the sentence is suspended, in which case the term does not begin to run until a committal order is issued⁷.

Time during which an offender is released on compassionate grounds or is unlawfully absent during the currency of his sentence does not count towards completion of the term of sentence⁸. Any time during which an offender is in naval, military, air force or civil custody while removed temporarily from his place of confinement for the purpose of legal proceedings or other lawful purpose is reckoned as part of the sentence⁹.

The unexpired portion of a sentence of imprisonment or detention or of a custodial order may be remitted by an order made by the Defence Council or by an officer holding any such command as may be prescribed in regulations or by the officer who issued the committal order¹⁰.

No person may be kept continuously in detention or detained under a custodial order for a period exceeding two years in pursuance of two or more sentences of detention or custodial orders¹¹. This does not affect the validity of any order or direction that a sentence is to begin to run from the expiration of another such sentence, but so much of any total term of detention that exceeds two years must be remitted¹². Where a person sentenced to detention or to detention by virtue of a custodial order is subsequently sentenced to imprisonment, so much of the sentence of detention as has not been served is remitted by virtue of the sentence of imprisonment, whether or not that sentence is suspended¹³.

1 Naval Discipline Act 1957 s 85(1) (amended by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; and the Armed Forces Discipline Act 2000 s 25, Sch 3 para 10). As to custodial orders see the Naval Discipline Act 1957 s 43AA(5) (as added and substituted); and paras 431-434 ante.

2 Courts-Martial (Appeals) Act 1968 s 11(2). The term of any substituted sentence imposed by the Courts-Martial Appeal Court begins to run, unless that court otherwise directs, from the time from which it would have begun to run had it been passed by the court from which the appeal is brought, and it is deemed for the purposes of the Naval Discipline Act 1957 to be a sentence passed by the court-martial: Courts-Martial Appeals Act 1968 s 17(1), (2)(a) (s 17(2)(a) amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II). As to appeals to the Courts-Martial Appeal Court see para 529 et seq post; and as to review of sentence by or on behalf of the Defence Council see para 473 ante. As to the Defence Council see para 2 ante.

3 See the Naval Discipline Act 1957 s 86(1), (2). See also s 86(2A) (added by the Armed Forces Discipline Act 2000 Sch 3 para 13).

4 See under the Naval Discipline Act 1957 s 38(3) (as amended). As to offences in relation to the court see para 467 ante.

5 See *ibid* s 86(1), (2).

6 *Ibid* s 86(3) (added by the Armed Forces Act 1971 s 39(3)). For the meaning of 'civil offence' see para 422 note 2 ante.

7 Naval Discipline Act 1957 s 90(1) (amended by the Armed Forces Act 1991 s 12(1)). As to committal orders see para 478 post.

8 See the Naval Discipline Act 1957 ss 87, 88 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

9 Naval Discipline Act 1957 s 84(4).

10 See *ibid* ss 43AA(5), 92(1) (s 43AA(5) added by the Armed Forces Act 1981 s 2(2); and substituted by the Armed Forces Act 1986 s 16(1), Sch 1 para 5(5); and the Naval Discipline Act 1957 s 92(1) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). See also the Naval Sentences (Suspension, Committal and Remission Regulations) 1958 (which are not made by statutory instrument but are published in the Manual of Naval Law vol III App VII). As to remission for good conduct of sentences of detention, which are normally served at the Military Corrective Training Centre at Colchester, subject to Army discipline, see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 (amended by SI 1991/826). Remission of sentences of imprisonment served in civil prisons in the United Kingdom is subject to the provisions applying to civil prisons: see the Naval Discipline Act 1957 s 83. See further PRISONS vol 36(2) (Reissue) para 617. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

11 See *ibid* ss 43AA(5), 89(1) (s 43AA(5) as added and substituted: see note 10 supra).

12 *Ibid* s 89(2). Where a sentence is suspended (see para 477 post), any period of detention ending with the beginning of the suspension is to be taken to be continuous with any period of detention beginning with the end of the suspension: s 89(2A) (added by the Armed Forces Discipline Act 2000 Sch 3 para 15).

13 Naval Discipline Act 1957 ss 43AA(5), 89(3) (s 43AA(5) as added and substituted: see note 10 supra).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

476 Commencement and duration of sentence

TEXT AND NOTES--As to the commencement of sentences of the Court Martial, see the Armed Forces Act 2006 s 289.

NOTE 2--Courts-Martial Appeals Act 1968 s 17(1) substituted, s 17(2) repealed: Armed Forces Act 2006 Sch 8 para 17.

TEXT AND NOTE 8--Replaced. See now the Armed Forces Act 2006 s 301.

TEXT AND NOTE 10--As to the remission of certain sentences on the passing of a custodial sentence, see the Armed Forces Act 2006 s 302.

NOTE 10--SI 1979/1456 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(vi) Treatment and Execution of Sentence/477. Postponement and suspension of sentence.

477. Postponement and suspension of sentence.

On passing any sentence, a court-martial may order that the sentence is not to have effect until the end of the period specified in the order¹. The Defence Council² or any officer authorised by it may terminate the period specified in an order or extend such a period for a further period specified by it³. On the termination of such a period, the sentence in respect of which the order in question was made has effect⁴.

Where any person has been sentenced to imprisonment or detention, the authority having power to issue an order of committal⁵ may, in lieu of issuing such an order, order that the sentence of imprisonment or detention be suspended until an order of committal has been issued⁶. Where a committal order has been issued in respect of a sentence of imprisonment or detention, that sentence may be suspended by order of the Defence Council, the committing authority, the commander-in-chief, the senior officer at the place where the offender is confined or, where the sentence was imposed summarily, the commanding officer of the ship or establishment to which the offender belongs⁷. Where a sentence of imprisonment or detention is so suspended, a committal order may be issued at any time by the Defence Council, the commander-in-chief, the authority who suspended the sentence, or, where sentence was by court-martial, by the senior naval officer at the place where the offender is serving, or, where the sentence was passed on summary trial, by the offender's commanding officer; and thereupon the suspension ceases⁸. Any authority by whom the sentence was or could have been suspended may at any time, and must at intervals of not more than three months, reconsider any case of suspension, and if on reconsideration it appears to it that the conduct of the offender since his conviction has been such as to justify a remission of sentence, it must remit the whole or any part of it⁹. A suspended sentence must, unless the suspension has been sooner determined, be remitted at the end of a year¹⁰.

1 Naval Discipline Act 1957 s 89A(1) (s 89A added by the Armed Forces Act 1996 s 9(3)). On reviewing a sentence under the Naval Discipline Act 1957 s 70 (as substituted and amended) (see para 473 ante), the reviewing authority may: (1) if the sentence has not had effect, order that the sentence is not to have effect until the end of the period specified in the order; (2) if the sentence has had effect, order that the sentence is to cease to have effect on the making of the order until the end of the period specified in the order: s 89A(2) (as so added). On exercising any power under s 71 (as substituted) (see para 474 ante) to pass or substitute a sentence, the reviewing authority may order that the sentence is not to have effect until the end of the period specified in the order: s 89A(3) (as so added). As to the reviewing authority see para 473 note 4 ante. Nothing in s 89A (as added) prevents s 85(1) (as amended) (see para 476 ante) from applying in relation to a sentence of imprisonment or detention awarded under the Naval Discipline Act 1957: s 89A(6) (as so added).

2 As to the Defence Council see para 2 ante.

3 Naval Discipline Act 1957 s 89A(4) (as added: see note 1 supra).

4 Ibid s 89A(5) (as added: see note 1 supra).

5 As to such authorities see ibid s 81(3) (as amended); and para 478 post.

6 Ibid s 90(1) (amended by the Armed Forces Act 1991 s 12(1)). In such a case, the term of the sentence does not commence until a committal order is issued: see the Naval Discipline Act 1957 s 90(1) (as so amended). Officers awarding punishments of imprisonment or detention may use the power of suspension more freely than would be the case in a civilian criminal court. For the circumstances in which it might be used see the Manual of Naval Law vol I Ch 10 art 1001. As to suspension of sentences in a civilian criminal court see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 110 et seq.

7 See the Naval Discipline Act 1957 ss 90(2), 91(2) (s 90(2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). See also the Naval Sentences (Suspension, Committal and Remission) Regulations 1958 (set out in the Manual of Naval Law vol III App VII). Where a sentence of imprisonment or detention is suspended, the authority ordering the suspension may direct that certain other punishments involved in the sentence are also to be suspended: Naval Discipline Act 1957 s 90(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). See also the Naval Sentences (Suspension, Committal and Remission) Regulations 1958 reg 6. The Secretary of State may by order empower courts-martial to pass suspended and partly suspended sentences of imprisonment on civilians subject to naval discipline (see the Criminal Justice Act 1988 s 50 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 103)), but at the date at which this volume states the law no such order had been made. As to the Secretary of State see para 2 ante. As to the civilians who are subject to naval discipline see para 311 ante.

8 See the Naval Discipline Act 1957 s 91(1). See also the Naval Sentences (Suspension, Committal and Remission) Regulations 1958 reg 4. If during suspension a further offence is committed for which the offender is sentenced to imprisonment or detention, the authority having power to order committal in respect of the original suspended sentence or the further sentence may, subject to any recommendation to the contrary from the court or officer who tried the second offence, direct that the sentence in respect of which the order is issued is to begin to run from the expiration of the other sentence: Naval Discipline Act 1957 s 91(3). However, if the total of two sentences of detention exceeds two years, the period in excess is remitted, and if the second sentence awarded is one of imprisonment, a previous sentence of detention is remitted: see s 89(2), (3); and para 476 ante. If at any time during the suspension of sentence the offender's behaviour is in any way unsatisfactory, the sentence may be enforced: see the Manual of Naval Law vol I Ch 10 art 1005.3.

9 Naval Discipline Act 1957 s 92(2). Every three months the offender must be brought before the commanding officer, who must review the circumstances, warn the offender that he is still under probation and decide whether or not to remit the sentence or, if the offender was sentenced by court-martial, forward a report on the man's conduct to the superior authority who will decide whether the sentence is to continue suspended or be remitted: see the Manual of Naval Law vol I Ch 10 arts 1005, 1007, 1008.

10 Naval Discipline Act 1957 s 92(3) (added by the Armed Forces Act 1971 s 54(2)).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

477 Postponement and suspension of sentence

TEXT AND NOTES--As to suspended sentences and the activation of such sentences by the Court Martial and commanding officers, see now the Armed Forces Act 2006 ss 190-195.

NOTE 7--Criminal Justice Act 1988 s 50 repealed: Armed Forces Act 2006 Sch 16 para 112.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(vi) Treatment and Execution of Sentence/478. Committal order for imprisonment or detention.

478. Committal order for imprisonment or detention.

A sentence of imprisonment or detention is brought into effect by an order committing the offender to a place of imprisonment or detention made by any of the following authorities¹:

- 464 (1) in any case, the Defence Council² or the Commander-in-Chief³;
- 465 (2) where the offender is tried on any foreign station, the senior naval officer present at the place of trial⁴;
- 466 (3) where the offender is tried by court-martial, the court-martial by which he is tried⁵;
- 467 (4) where the offender is tried summarily⁶, the officer who tried him or the offender's commanding officer⁷.

1 Naval Discipline Act 1957 s 81(3). As to the duties of the governor of a civil prison on receipt of such an order see s 107(1)(a); and PRISONS vol 36(2) (Reissue) para 638.

2 As to the Defence Council see para 2 ante.

3 Naval Discipline Act 1957 s 81(3)(a) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I).

4 Naval Discipline Act 1957 s 81(3)(b).

5 Ibid s 81(3)(c) (amended by the Armed Forces Act 1996 s 5, Sch 1 para 90).

6 Ibid under the Naval Discipline Act 1957 s 52D (as added and amended): see para 350 ante.

7 Ibid s 81(3)(d) (amended by the Armed Forces Act 1996 Sch 1 para 90).

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

478 Committal order for imprisonment or detention

NOTE 1--As to the duty of the governor to receive prisoners, see now the Armed Forces Act 2006 s 299.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(4) NAVAL COURTS-MARTIAL/(vi) Treatment and Execution of Sentence/479. Place of imprisonment or detention or detention by virtue of a custodial order.

479. Place of imprisonment or detention or detention by virtue of a custodial order.

The Defence Council¹ has power to set apart premises or vessels under the control of the Secretary of State² as naval detention quarters, and the Secretary of State has power to make rules (known as 'naval detention quarters rules') in respect of them and of the persons serving sentences in them³. The rules made under this power deal with control and inspection; the duties of the staff; admission to and removal and release from naval detention quarters; remission of sentence; facilities for complaints; petitions and appeals; the welfare, discipline, control and employment of men under sentence; and offences by persons other than men under sentence⁴.

A term of imprisonment may be served in any naval detention quarters, any civil prison within Her Majesty's dominions⁵, or in any military or air force prison, detention barrack, corrective training centre, service detention room or any other establishment in which persons may be required to serve sentences of imprisonment under the Army Act 1955 or the Air Force Act 1955⁶, as determined by an authority having power to make an order committing the offender⁷.

Where a custodial order⁸ is made against an offender aged 17 years who is in, or is removed to, England or Wales, the appropriate institution for his detention under the order is a young offender institution⁹.

A person sentenced to detention must undergo his punishment in any naval detention quarters or in a military or air force detention barrack, corrective training centre or unit or service detention room, although he may be detained temporarily in a military, air force or civil prison for a period not exceeding seven days in exceptional circumstances¹⁰.

Within these limits, the place of confinement may be varied from time to time by order in writing of the Defence Council, a commander-in-chief or the senior naval officer present, who may also order the production of a person for the purpose of attending proceedings under the Naval Discipline Act 1957, but the naval authorities have no power to transfer an offender from one civil prison to another within the United Kingdom¹¹. Except in special circumstances, offenders sentenced outside the United Kingdom to imprisonment or detention for a term exceeding 12 months must be removed as soon as possible to the United Kingdom¹².

1 As to the Defence Council see para 2 ante.

2 As to the Secretary of State see para 2 ante.

3 See the Naval Discipline Act 1957 s 82(1) (amended by the Coroners Act 1988 s 36(1), Sch 3 para 12; the Armed Forces Act 1996 s 35(1), (2), Sch 6 para 6, Sch 7 Pt III; and the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I). The rules must be made by statutory instrument subject to annulment by resolution of either House of Parliament: Naval Discipline Act 1957 s 82(7) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

At the date at which this volume states the law there are no naval detention quarters and persons sentenced to detention under the Naval Discipline Act 1957 must serve their sentence in accordance with the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 (as amended) (as to which see para 515 post). See also the Manual of Naval Law vol I Ch 10 art 1020.

4 See the Naval Detention Quarters Rules 1973, SI 1973/270 (amended by SI 1975/227; SI 1976/892; SI 1980/724). See, however, note 3 supra.

Subject to minor modifications, the Prison Act 1952 ss 39-42 (as amended), which relate to offences by persons other than prisoners (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 744-745; PRISONS

vol 36(2) (Reissue) para 604) are applied in relation to naval detention quarters and to men under sentence in them: Naval Discipline Act 1957 s 82(3); Naval Detention Quarters Rules 1973, SI 1973/270, r 94, Sch 3. The Naval Detention Quarters Rules 1973, SI 1973/270 (as amended) apply to all naval detention quarters in the United Kingdom and elsewhere subject, in the case of detention quarters on a foreign station on which persons subject to the Naval Discipline Act 1957 are on active service, to any modifications required by the exigencies of the service and authorised by the commander-in-chief: see s 82(6) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); and the Naval Detention Quarters Rules 1973, SI 1973/270, r 104. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante. As to the persons subject to the Naval Discipline Act 1957 see paras 306, 309 et seq ante. The rules may not authorise the infliction of corporal punishment: s 82(2). The rules may contain such incidental and supplementary provisions as are necessary for the purposes of the rules: s 82(5). The rules may be made so as to apply to persons detained in naval detention quarters while serving sentences of imprisonment or detention awarded under the Army Act 1955 or the Air Force Act 1955, notwithstanding that such persons are not for the time being subject to the Naval Discipline Act 1957: s 82(4).

5 As to the meaning of 'Her Majesty's dominions' see para 20 note 5 ante.

6 As to other establishments in which persons may be required to serve sentences of imprisonment under the Army Act 1955 or the Air Force Act 1955 see para 515 post.

7 See the Naval Discipline Act 1957 s 81(1), (3). As to service of sentence in a civil prison in the United Kingdom see s 83; para 476 ante; and PRISONS vol 36(2) (Reissue) para 638.

8 See an order made under *ibid* s 43AA (as added and amended): see paras 433-434 ante. See also SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

9 See the Naval Discipline Act 1957 s 43AA(3), (6) (as amended); and para 434 ante. As to young offender institutions see PRISONS.

10 See *ibid* s 81(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I).

11 See the Naval Discipline Act 1957 s 84(1)-(3), (5).

12 See *ibid* s 82A(2)-(6) (s 82A added by the Armed Forces Act 1971 s 52(1)). A person serving in the United Kingdom a sentence of imprisonment or detention awarded under the Naval Discipline Act 1957 may be removed out of the United Kingdom to, but only to: (1) any colony in which he was entered for service in the Royal Navy; or (2) any place outside the United Kingdom where the ship or naval establishment to which he for the time being belongs is situated: s 82A(1) (as so added). As to the meaning of 'colony' see para 20 note 4 ante.

UPDATE

448-479 [Court Martial]

Naval Discipline Act 1957 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

479 Place of imprisonment or detention or detention by virtue of a custodial order

TEXT AND NOTES--As to place of service detention see now the Armed Forces Act 2006 s 296. As to detention in service custody following the passing of a custodial sentence, pending transfer to the appropriate establishment, see s 297.

The Secretary of State may make rules about service custody and the service of relevant sentences: see the Armed Forces Act 2006 s 300; and the Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

NOTE 4--SI 1973/270 replaced: Service Custody and Service of Relevant Sentences
Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(i) Constitution and Jurisdiction/480. Types and jurisdiction of courts-martial.

(5) ARMY AND AIR FORCE COURTS-MARTIAL

(i) Constitution and Jurisdiction

480. Types and jurisdiction of courts-martial.

All offences against military or air force law are triable by courts-martial, of which there are three types: general, district and field general¹. The composition of these courts varies², and their competence to try officers³, and the amount of punishment which they may impose⁴, differ, but all levels of courts-martial have the power to try any offence triable by courts-martial.

Courts-martial are not standing courts; a court-martial is set up for the trial of a specific case or cases by the appropriate authority, known as the court administration officer⁵.

The former powers of the High Court to make orders of mandamus, prohibition or certiorari in relation to the jurisdiction of a criminal court are no longer exercisable in relation to the jurisdiction of a court-martial in matters relating either to trial by court-martial for an offence or appeals from a standing civilian court⁶.

¹ See the Army Act 1955 s 84D (as added), s 103B (as added and amended), and the Air Force Act 1955 s 84D (as added), s 103B (as added and amended); and para 482 post. A field general court-martial is only a particular form of general court-martial: see *R v Governor of Lewes Prison, ex p Doyle* (1917) 2 KB 254 (although it is submitted that given the key role of the judge advocate a field general court-martial which can sit without a judge advocate can no longer be equated with a general court-martial).

² As to the composition of the three types of court-martial see para 482 et seq post.

³ Whereas a general or a field general court-martial has power to try any person subject to military or air force law, as the case may be, for any offence which under the Army Act 1955 or the Air Force Act 1955 is triable by court-martial (Army Act 1955 s 85(1); Air Force Act 1955 s 85(1)), a district court-martial does not have the power to try an officer (Army Act 1955 s 85(2); Air Force Act 1955 s 85(2)). As to the categories of persons subject to military or air force law see para 307 et seq ante.

⁴ A general court-martial has power to award any punishment authorised by the Army Act 1955 and the Air Force Act 1955, as the case may be, for the offence in question: Army Act 1955 s 85(1) (amended by the Armed Forces Discipline Act 2000 s 12(2)); Air Force Act 1955 s 85(1) (amended by the Armed Forces Discipline Act 2000 s 12(2)). A field general court-martial has the same powers of punishment, but where such a court-martial consists of fewer than three officers it may not award a sentence exceeding imprisonment for two years or detention under a custodial order for a period exceeding two years: see the Army Act 1955 s 103B(8) (added by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 31; and amended by the Armed Forces Act 2001 s 19, Sch 2 para 6(1), (6)); and the Air Force Act 1955 s 103B(8) (added by the Armed Forces Act 1996 Sch 1 paras 33, 47; and amended by the Armed Forces Act 2001 Sch 2 para 13(1), (6)). A district court-martial also has the same powers of punishment as a general court-martial, except that it may not award the punishment of imprisonment for a term exceeding two years, or commit a person to detention under a custodial order for a period of more than two years, and may not sentence a warrant officer (except an acting warrant officer) to imprisonment or to discharge with ignominy, dismissal or detention: Army Act 1955 ss 85(2), 143(2) (s 85(2) amended by the Criminal Justice Act 1982 s 58, Sch 8 para 5(a); and by the Armed Forces Act 2001 s 38, Sch 7 Pt 4); Air Force Act 1955 ss 85(2), 143(2) (s 85(2) amended by the Criminal Justice Act 1982 Sch 8 para 5(a); and by the Armed Forces Act 2001 Sch 7 Pt 4). As to the power to sentence a person to detention under a custodial order see paras 433-434 ante. Where a court-martial tries a person who has elected for court-martial trial its sentencing powers are limited to making only the awards of punishment that could have made if the person in question had not so elected: see the Army Act 1955 ss 85(1) (as so amended), 85A (added by the Armed Forces Discipline Act 2000 s 12(1)), and the Air Force Act 1955 s 85(1) (as so amended), s 85A (added by the Armed Forces Discipline Act 2000 s 12(1)). As to election for court-martial trial see para 355 ante.

5 The court administration officer for each service is an officer (or other person) appointed by the Defence Council to convene general and district courts-martial and perform other prescribed functions: Army Act 1955 ss 84A, 225(1); Air Force Act 1955 ss 84A, 223(1) (all added by the Armed Forces Act 1996 s 5, Sch 1 paras 19, 35, 74, 84). The detailed functions of the court administration officer are dealt with as they arise when court-martial procedures are discussed elsewhere in this title. As to the Defence Council see para 2 ante.

The court administration officer in respect of a particular court-martial is the court administration officer who convened that court-martial and includes his successor or any person for the time being exercising his successor's function: Army Act 1955 ss 84A, 225(1); Air Force Act 1955 ss 84A, 223(1) (all as so added).

Prior to the coming into force on 1 April 1997 of the amendments made by the Armed Forces Act 1996, the officers on courts-martial were appointed by the convening officer who was, for the army, usually the local brigade or garrison commander for a district court-martial, and the general officer commanding a division or district for a general court-martial. The European Court of Human Rights held that the position of the convening officer was such that the independence of the members that he appointed could be called into question since he also decided who would be tried and on what charges before selecting the members of the court from officers under his command: see *Findlay v United Kingdom* (1997) 24 EHRR 221, (1997) Times, 27 February, ECtHR. The new system is designed to be independent of the chain of command and the court administration officer selects the members of the court from outside the chain of command of which the accused is part. As the Courts-Martial Appeal Court has recently recognised, 'the court administration officer is responsible for the administrative arrangements for courts-martial. Most significantly, he selects the court's members for each particular case. Court administration officers are appointed in each of the Services. They are independent both of the higher authority and the prosecuting authority. The guiding principle for the selection of members of a court-martial is that they should be officers who are not under the command of the higher authority': *R v Spear, R v Boyd* [2001] EWCA Crim 3 at [18], [2001] QB 804 at [18], C-MAC, per Laws LJ. The European Court of Human Rights subsequently held that there were insufficient guarantees to ensure the independence of the lay members of the court, but the independence of the court administration officers and the actual selection of officers was not called into question: see Application 38784/97 *Morris v United Kingdom* [2002] ECHR 38784/97, 34 EHRR 1253, ECtHR (the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134) requires an 'independent and impartial tribunal' to try cases and the court noted the changes made in 1996 to answer the criticisms made in *Findlay v United Kingdom* supra, and concluded that the selection process was sufficiently independent; the court went on to hold that the independence of the court was not sufficiently guaranteed on other grounds). This reasoning was not followed in the House of Lords in *R v Spear* [2002] UKHL 31, [2003] 1 AC 734, [2002] 3 All ER 1074 (affg *R v Spear, R v Boyd* supra) (decision of *Morris v United Kingdom* supra adopted only in part). See further para 481 post.

6 See the Supreme Court Act 1981 s 29(1), (3A) (s 29(1) amended, and s 29(3A) added, by the Armed Forces Act 2001 s 23). This provision applies in relation to army, air force and naval courts-martial: Supreme Court Act 1981 s 29(3A) (as so added). There is a right of appeal from a court-martial, either from a first-instance decision of that court or from a decision on an appeal from a standing civilian court, to the Courts-Martial Appeal Court (see para 529 et seq post), and hence the High Court's powers of review are not required.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

480 Types and jurisdiction of [Court Martial]

TEXT AND NOTES--As to the jurisdiction of the Court Martial, see now the Armed Forces Act 2006 s 50; and PARA 451.

TEXT AND NOTE 6--Orders of mandamus, prohibition and certiorari are now known as mandatory, prohibiting and quashing orders: 1981 Act s 29(1) (s 29(1) substituted by the Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI

2004/1033; 1981 Act s 29(3A) substituted by the Armed Forces Act 2006 Sch 16 para 93).

Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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481. Courts-martial and the European Convention on Human Rights.

The system of army and air force courts-martial has been rigorously overhauled in recent years in response to a body of jurisprudence suggesting that the courts-martial system itself is incompatible with the right to a fair hearing before an independent and impartial tribunal enshrined in the European Convention on Human Rights¹. The first aspect of the system to be called into question was the role of the convening officer, whose combination of duties, whereby he made the decision to prosecute, appointed members of the court, and oversaw the administration of the trial, was held to compromise the independence and impartiality of the court²; accordingly, statutory amendments were made abolishing the role of convening officer and dividing up his various responsibilities between different officers³. It was subsequently held that the newly constituted court was not incompatible with the guarantee of a fair trial⁴, although subsequent decisions of the House of Lords and the European Court of Human Rights, whilst upholding the existing system, have cast further doubt on its legitimacy, with particular reference to the processes by which officers serving alongside the judge advocate and president⁵ are appointed⁶.

¹ See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134 et seq.

² See *Findlay v United Kingdom* (1997) 24 EHRR 221, (1997) Times, 27 February, ECtHR; *Hood v United Kingdom* (1999) 29 EHRR 365, ECtHR; *Cable v United Kingdom* (1999) 30 EHRR 1032, (1999) Times, 11 March, ECtHR.

³ The powers of the convening officer in connection with the convening and administration of army and air force courts-martial were contained in the Army Act 1955 ss 84, 86-90 (as amended) and the Air Force Act 1955 ss 84, 86-90 (as amended), which have been repealed by the Armed Forces Act 1996 ss 5, 35(2), Sch 1 paras 17, 21, 33, 37, Sch 7 Pt I, and in the Rules of Procedure (Army) 1972, SI 1972/316, and the Rules of Procedure (Air Force) 1972, SI 1972/419, which have been revoked. Replacement provisions complying with the Convention for the Protection of Human Rights and Fundamental Freedoms have been introduced: see the Army Act 1955 ss 84A-84D (as added and amended); the Air Force Act 1955 ss 84A-84D (as added and amended); the Courts-Martial (Army) Rules 1997, SI 1997/169; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171; and para 482 et seq post.

⁴ See *R v Williams* (2001) 145 Sol Jo LB 223, (2001) Times, 8 October, C-MAC, in which it was held that a court constituted in accordance with the Army Act 1955 ss 84A-84D (as added and amended), the Air Force Act 1955 ss 84A-84D (as added and amended), the Courts-Martial (Army) Rules 1997, SI 1997/169, and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171 (see para 482 et seq post) would not be more likely to convict an accused than it would have been under the former system (see the text and notes 2-3 supra).

⁵ As to the appointment of officers for courts-martial see para 482 et seq post.

⁶ See *R v Spear* [2002] UKHL 31, [2003] 1 AC 734, [2002] 3 All ER 1074; affg [2001] EWCA Crim 3, [2001] QB 804, C-MAC; *Morris v United Kingdom* (2002) 34 EHRR 1253, ECtHR.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by

Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

481 [Court Martial] and the European Convention on Human Rights

NOTE 1--A court martial is unfair where the judge advocate is a serving naval officer and is appointed by a serving naval officer: *R v Dundon* [2004] EWCA Crim 621, (2004) Times, 24 April.

NOTE 2--See also Application 36256/97 *Thompson v United Kingdom* [2004] All ER (D) 120 (Jun), ECtHR (summary trial by commanding officer; commanding officer not constituting impartial judicial officer).

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482. Constitution of general, district and field general courts-martial.

A general or district court-martial¹ under the Army Act 1955 or the Air Force Act 1955 consists of the judge advocate, who conducts the trial and must accordingly be legally qualified², and the president³ and a number of additional members (at least four in a general court-martial, at least two in a district court-martial)⁴, who need not be legally qualified. The president and each of the additional members must be officers⁵, but an officer may not be appointed president or member of a court-martial unless: (1) he has held a commission in any of Her Majesty's naval, military or air forces for a period of, or for periods not amounting in the aggregate to, less than three years (for a general court-martial) or two years (for a district court-martial)⁶; or (2) in the case of a person to be appointed as a member of a court-martial, he was a warrant officer in any of those forces immediately before receiving his commission⁷. A court-martial may not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned⁸, although provision is made for the appointment of officers from different branches of the service to sit as members of courts-martial where these provisions cannot be complied with⁹.

A field general court-martial has the powers of a general court-martial¹⁰ but may only be convened by an officer commanding a body of regular forces¹¹ on active service¹² in circumstances where he is of the opinion that it is not possible without serious detriment to the public service for a charge to be tried by a general or district court-martial¹³. It consists of a president¹⁴, at least two additional members¹⁵, and, where possible, a judge advocate¹⁶. The president and each of the additional members must be officers¹⁷, although a field general court-martial may not include any warrant officer unless the court-martial is for the trial of a person of a rank below that of the warrant officer concerned¹⁸. Provision is made for the appointment of officers from different branches of the service to sit as members of field general courts-martial where these provisions cannot be complied with¹⁹, and for the amendment or withdrawal of convening orders²⁰. The Secretary of State²¹ may by statutory instrument make rules with respect to field general courts-martial²².

1 As to various restrictions and limitations and special requirements relating to membership of courts-martial see para 483 post.

2 Army Act 1955 s 84D(1)(b), (2)(b) (ss 84B, 84D added by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 19; Army Act 1955 s 84D substituted by the Armed Forces Act 2001 s 19, Sch 2 para 2); Air Force Act 1955 s 84D(1)(b), (2)(b) (ss 84B, 84D added by the Armed Forces Act 1996 Sch 1 paras 33, 35; Air Force Act 1955 s 84D substituted by the Armed Forces Act 2001 Sch 2 para 9). For these purposes 'the judge advocate' means the judge advocate appointed by or on behalf of the Judge Advocate General to be a member of the court-martial: Army Act 1955 s 84B(1); Air Force Act 1955 s 84B(1) (both as so added). As to the appointment and duties of the Judge Advocate General, the Vice Judge Advocate General and the Assistant Judge Advocate General see paras 446-447 ante. As to the appointment and duties of the judge advocate see para 484 post.

3 Army Act 1955 s 84D(1)(a), (2)(a); Air Force Act 1955 s 84D(1)(a), (2)(a) (all as added and substituted: see note 2 supra). The president, subject to the judge advocate's rulings and directions on how the trial is conducted (see para 484 post), has a responsibility to ensure that the trial befits the standards and traditions of the army or air force: Courts-Martial (Army) Rules 1997, SI 1997/169, r 33(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 33(1).

Permanent presidents are no longer appointed to army and air force courts-martial even though it has been held that, because they tended to be in their last posting, could not ordinarily be removed and were not reported on, a court with a permanent president constituted an independent and impartial tribunal for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 140).

(see *R v Spear* [2002] UKHL 31, [2003] 1 AC 734, [2002] 3 All ER 1074; affg [2001] EWCA Crim 3, [2001] QB 804, C-MAC).

4 Army Act 1955 s 84D(1)(c), (2)(c); Air Force Act 1955 s 84D(1)(c), (2)(c) (all as added and substituted: see note 2 supra).

5 Army Act 1955 s 84D(1)(a), (c), (2)(a), (c); Air Force Act 1955 s 84D(1)(a), (c), (2)(a), (c) (all as added and substituted: see note 2 supra). Where the court-martial is under the Army Act 1955, the president must be a military officer (ie an officer belonging to Her Majesty's military forces and subject to military law) not below the rank of field officer, unless in the opinion of the court administration officer a suitably qualified field officer is not, with due regard to the public service, available, and in any event not below the rank of captain: Army Act 1955 s 84D(1)(a), (2)(a), (4), (11) (as so added and substituted). Where the court-martial is under the Air Force Act 1955, the president must be an air force officer (ie an officer belonging to Her Majesty's air forces and subject to air force law) not below the rank of squadron leader, unless in the opinion of the court administration officer a suitably qualified squadron leader is not, with due regard to the public service, available, and in any event not below the rank of flight lieutenant: Air Force Act 1955 s 84D(1)(a), (2)(a), (4), (11) (as so added and substituted). In practice the president of a general court-martial for the army will be a brigadier or full colonel and for the air force a group captain: see the Queen's Regulations for the Army 1975 para 6.102 ('when a general officer, brigadier or colonel is available to sit as president of a general court-martial, an officer of lower rank will not be appointed'); and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154 ('where an air officer or group captain is available to sit as president of a general court-martial, an officer of junior rank is not to be appointed').

In a general court-martial under the Army Act 1955 two of the additional members must each be either a military officer or a military warrant officer while the rest are military officers (s 84D(1)(c) (as so added and substituted)), and not more than two such members may be of a rank below that of captain (s 84D(9) (as so added and substituted)). Additionally, in a general court-martial convened under the Army Act 1955 for the trial of an officer above the rank of captain, all the members so appointed must be of or above that rank (s 84D(9) (as so added and substituted)). In a district court-martial under that Act one of the additional persons must be either a military officer or a military warrant officer while the rest are military officers (s 84D(2)(c) (as so added and substituted)).

In a general court-martial under the Air Force Act 1955 two of the additional members must each be either an air force officer or an air force warrant officer while the rest are air force officers (s 84D(1)(c) (as so added and substituted)), and not more than two such members may be of a rank below that of flight lieutenant (s 84D(9) (as so added and substituted)). Additionally, in a general court-martial convened under the Air Force Act 1955 for the trial of an officer above the rank of flight lieutenant, all the members so appointed must be of or above that rank (s 84D(9) (as so added and substituted)). In a district court-martial under that Act one of the additional persons must be either an air force officer or an air force warrant officer while the rest are air force officers (s 84D(2)(c) (as so added and substituted)).

For these purposes, 'military warrant officer' means a warrant officer belonging to Her Majesty's military forces and subject to military law; and 'air force warrant officer' means a warrant officer belonging to Her Majesty's air forces and subject to air force law: Army Act 1955 s 84D(11); Air Force Act 1955 s 84D(11) (both as so added and substituted). As to the meanings of 'Her Majesty's military forces' and 'Her Majesty's air forces' see para 20 note 7 ante. As to the categories of persons subject to military or air force law see para 307 et seq ante.

6 Army Act 1955 s 84D(3), (5)(a), (6); Air Force Act 1955 s 84D(3), (5)(a), (6) (all as added and substituted: see note 2 supra).

7 Army Act 1955 s 84D(5)(b); Air Force Act 1955 s 84D(5)(b) (both as added and substituted: see note 2 supra). However, a court-martial may not include an officer who qualifies by virtue of this provision only unless the court-martial is for the trial of a person of a rank below that which the officer held immediately before he received his commission: Army Act 1955 s 84D(8); Air Force Act 1955 s 84D(8) (both as so added and substituted).

8 Army Act 1955 s 84D(7); Air Force Act 1955 s 84D(7) (both as added and substituted: see note 2 supra).

9 See the Army Act 1955 s 84D(10); and the Air Force Act 1955 s 84D(10) (both as added and substituted: see note 2 supra), which provide that if the court administration officer is of the opinion that the necessary number of suitably qualified military or air force officers or military or air force warrant officers is not, with due regard to the public service, available for appointment as members of courts-martial, he may appoint an officer from one of the other two branches of the service having qualifications corresponding to those required for a military or air force officer or, where a military or air force warrant officer could be appointed, a warrant officer from one of the other two branches of the service having qualifications corresponding to those required for a military or air force warrant officer.

10 Army Act 1955 s 103B(8) (ss 103A-103C added by the Armed Forces Act 1996 Sch 1 paras 17, 31); Air Force Act 1955 s 103B(8) (ss 103A-103C added by the Armed Forces Act 1996 Sch 1 paras 33, 47). For a restriction on a field general court-martial's sentencing powers see note 15 *infra*.

11 For the meaning of 'regular forces' see para 191 *ante*.

12 For the meaning of 'on active service' see para 305 *ante*.

13 Army Act 1955 s 103A(1), (3); Air Force Act 1955 s 103A(1), (3) (all as added: see note 10 *supra*). An officer may only direct that a charge be tried by a field general court-martial if he is the commanding officer who has investigated the charge, the commanding officer or appropriate superior authority who has determined on a summary dealing that the charge against the accused has been proved in a case where the accused has elected court-martial trial and that election has not been withdrawn, or, where the charge is against an officer or warrant officer, the higher authority to whom the charge has been referred by the commanding officer: Army Act 1955 s 103A(2); Air Force Act 1955 s 103A(2) (both as so added). For the meaning of 'commanding officer' see para 353 note 4 *ante*. For the meaning of 'appropriate superior authority' see para 354 note 8 *ante*.

Field general courts-martial are an emergency measure which, it is submitted, would be unlikely to be held to be an independent and impartial tribunal for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134 *et seq*), since they share many of the procedural elements of the unreformed general court-martial system which drew such criticism from the European Court of Human Rights prior to the reform of that system (see Application 22107/93 *Findlay v United Kingdom* (1997) 24 EHRR 221, (1997) Times, 27 February, ECtHR; and para 481 *ante*).

14 Army Act 1955 s 103B(1)(a) (s 103B as added (see note 10 *supra*): s 103B(1) amended by the Armed Forces Act 2001 Sch 2 para 6(1), (2)); Air Force Act 1955 s 103B(1)(a) (s 103B as added (see note 10 *supra*); s 103B(1) amended by the Armed Forces Act 2001 Sch 2 para 13(1), (2)). Although the officer convening a field general court-martial may not in general be a member of the court-martial, he may be its president if, in his opinion, it is not possible, without serious detriment to the public service, to appoint another officer as president: Army Act 1955 s 103A(6), (7); Air Force Act 1955 s 103A(6), (7) (both as added: see note 10 *supra*). The president has a responsibility to ensure that the trial befits the standards and traditions of the army or air force: Courts-Martial (Army) Rules 1997, SI 1997/169, r 33(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 33(1)).

15 Army Act 1955 s 103B(1)(b); Air Force Act 1955 s 103B(1)(b) (both as added (see note 10 *supra*); and amended (see note 14 *supra*)). However, if the officer who convened the field general court-martial is of opinion that three suitably qualified persons are not available for appointment under this provision without serious detriment to the public service, the field general court-martial may consist of the president and one other person: Army Act 1955 s 103B(2) (as so added; and amended by the Armed Forces Act 2001 Sch 2 para 6(1), (3)); Air Force Act 1955 s 103B(2) (as so added; and amended by the Armed Forces Act 2001 Sch 2 para 13(1), (3)).

Where only two persons, apart from the judge advocate, are members of a field general court-martial, the court may not impose a sentence exceeding two years' imprisonment or detention: Army Act 1955 s 103B(8) (as so added; and amended by the Armed Forces Act 2001 Sch 2 para 6(1), (6)); Air Force Act 1955 s 103B(8) (as so added; and amended by the Armed Forces Act 2001 Sch 2 para 13(1), (6)). Military detention is in any event limited to two years: see para 441 *ante*.

16 Army Act 1955 s 103B(3); Air Force Act 1955 s 103B(3) (both as added: see note 10 *supra*). The judge advocate is required to sit on a field general court-martial unless the officer convening the court is of opinion that a judge advocate is not available without serious detriment to the public service: Army Act 1955 s 103B(3); Air Force Act 1955 s 103B(3) (both as so added). For these purposes, 'a judge advocate' means a judge advocate appointed by or on behalf of the Judge Advocate General or, if the officer convening the court is of opinion that no such judge advocate is available without serious detriment to the public service, a qualified officer appointed by that officer: Army Act 1955 s 103B(4); Air Force Act 1955 s 103B(4) (both as so added). A officer is 'qualified' for these purposes if he is a person who: (1) has a general qualification (see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742)); (2) is an advocate or solicitor in Scotland; or (3) is a member of the Bar of Northern Ireland or a Solicitor of the Supreme Court of Northern Ireland: Army Act 1955 s 103B(5); Air Force Act 1955 s 103B(5) (both as so added). The judge advocate is required to conduct the trial in accordance with the law of England and Wales: Courts-Martial (Army) Rules 1997, SI 1997/169, r 32(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 32(1). As to the appointment and duties of the Judge Advocate General see paras 446-447 *ante*.

An order convening a field general court-martial must specify the date, time and place at which the court-martial is to sit, the officers who are to be members of the court, which of those officers is to be president, and any warrant officer who is to be a member of the court-martial: Army Act 1955 s 103A(4) (as added (see note 10 *supra*); and amended by the Armed Forces Act 2001 s 19, Sch 2 para 5(1), (2)); Air Force Act 1955 s 103A(4) (as added (see note 10 *supra*); and amended by the Armed Forces Act 2001 Sch 2 para 12(1), (2)). Where a

judge advocate is to be a member of a field general court-martial, the convening order must state that fact, and state whether the judge advocate is to be appointed by or on behalf of the Judge Advocate General or by the officer convening the court-martial: Army Act 1955 s 103A(4A) (as added (see note 10 supra); and amended by the Armed Forces Act 2001 s 19, Sch 2 para 5(1), (3)); Air Force Act 1955 s 103A(4A) (as added (see note 10 supra); and amended by the Armed Forces Act 2001 Sch 2 para 12(1), (3)).

17 Army Act 1955 s 103B(1); Air Force Act 1955 s 103B(1) (both as added (see note 10 supra) and amended (see note 14 supra)). Where the court-martial is under the Army Act 1955, the president must be a military officer (ie an officer belonging to Her Majesty's military forces and subject to military law) not below the rank of captain: Army Act 1955 s 103B(1)(a), (6), (9) (s 103B as so added; s 103B(1) as so amended). Where the court-martial is under the Air Force Act 1955, the president must be an air force officer (ie an officer belonging to Her Majesty's air forces and subject to air force law) not below the rank of flight lieutenant: Air Force Act 1955 s 103B(1)(a), (6), (9) (s 103B as so added; s 103B(1) as so amended).

In a field general court-martial under the Army Act 1955, of the two additional members, one must be either a military officer or military warrant officer while the rest are military officers: s 103B(1)(b) (as so added and amended). In a field general court-martial under the Air Force Act 1955, of the two additional members, one must be either an air force officer or air force warrant officer while the rest are air force officers: s 103B(1)(b) (as so added and amended). For these purposes 'military warrant officer' means a warrant officer belonging to Her Majesty's military forces and subject to military law; and 'air force warrant officer' means a warrant officer belonging to Her Majesty's air forces and subject to air force law: Army Act 1955 s 103B(9) (s 103B as so added; definitions added by the Armed Forces Act 2001 Sch 2 para 6(1), (7)(a), (b)); Air Force Act 1955 s 103B(9) (s 103B as so added; definitions added by the Armed Forces Act 2001 Sch 2 para 13(1), (7)(a), (b)).

18 Army Act 1955 s 103B(6A) (s 103B as added (see note 10 supra); s 103B(6A) added by the Armed Forces Act 2001 Sch 2 para 6(1), (4)); Air Force Act 1955 s 103B(6A) (s 103B as added (see note 10 supra); s 103B(6A) added by the Armed Forces Act 2001 Sch 2 para 13(1), (4)).

19 See the Army Act 1955 s 103B(7) (s 103B as added (see note 10 supra); s 103B(7) added by the Armed Forces Act 2001 Sch 2 para 6(1), (5); and the Air Force Act 1955 s 103B(7) (s 103B as added (see note 10 supra); s 103B(7) added by the Armed Forces Act 2001 Sch 2 para 6(1), (5)), which provide that if a field general court-martial is to be convened at any place where, in the opinion of the officer convening the court, the necessary number of suitably qualified military or air force officers or military or air force warrant officers is not, with due regard to the public service, available for appointment as members of the court-martial, he may appoint an officer from one of the other branches of the service having qualifications corresponding to those required for a military or air force officer or, where a military or air force warrant officer could be appointed, a warrant officer from one of the other branches of the service having qualifications corresponding to those required for a military or air force warrant officer.

20 See the Army Act 1955 s 103A(5); and the Air Force Act 1955 s 103A(5) (both as added: see note 10 supra).

21 As to the Secretary of State see para 2 ante.

22 Army Act 1955 s 103C(1); Air Force Act 1955 s 103C(1) (both as added: see note 10 supra). Such rules may in particular provide for any provision of the Army Act 1955 or the Air Force Act 1955 relating to general or district courts-martial or the proceedings of such courts-martial to apply to field general courts-martial or the proceedings of such courts-martial with the necessary modifications, and may make any provision with respect to field general courts-martial which may be made with respect to general and district courts-martial by rules under the Army Act 1955 s 103 or the Air Force Act 1955 s 103 (both as substituted and amended) (see para 487 et seq post): Army Act 1955 s 103C(2); Air Force Act 1955 s 103C(2) (both as so added). At the date at which this volume states the law no such rules had been made.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(i) Constitution and Jurisdiction/483. Restrictions on membership of courts-martial.

483. Restrictions on membership of courts-martial.

The following are not eligible for membership of a court-martial¹:

- 468 (1) the court administration officer²;
- 469 (2) any officer or warrant officer serving under the command of the court administration officer³;
- 470 (3) the accused's commanding officer⁴;
- 471 (4) the higher authority to whom the preliminary charge against the accused was referred⁵;
- 472 (5) any officer or warrant officer serving under the command of that higher authority⁶;
- 473 (6) any other officer who has investigated the subject matter of the charge⁷;
- 474 (7) any officer or warrant officer who has held, or has acted as one of the persons holding, an inquiry relating to the subject matter of the charge⁸;
- 475 (8) any officer or warrant officer serving under the command of the prosecuting authority⁹; and
- 476 (9) any officer or warrant officer who is qualified to practice law in the United Kingdom¹⁰ or Commonwealth¹¹.

So far as practicable an army court-martial must be composed of members from different units, and all members and waiting members must be drawn from outside the chain of command and reporting chain of the higher authority that referred the case to the prosecuting authority¹². The air force has a similar rule, in which it is also provided that whenever possible members should be from different stations¹³. Both the army and air force require that where a commanding officer is to be tried as many members of the court as possible should hold, or should have held, equivalent command appointments¹⁴. In the army it is provided that if the accused is an officer, the rank of each member of the court should be equal to, or higher than, that of the accused: the air force does not have an equivalent provision¹⁵. In the army an officer belonging or attached to the Adjutant General's Corps (Provost of Army Legal Services Branch) or Royal Army Chaplain's Department cannot sit on a court-martial¹⁶. The air force rules are in similar terms save that a member of the provost staff can be appointed to try a provost officer or police non-commissioned officer¹⁷. Where a trial of a member of the Territorial Army or the reserve or auxiliary air force takes place a member of the court should generally be appointed from the appropriate reserve force¹⁸. The air force regulations provide that where the accused is charged with offences against flying regulations the president must be an officer of the General Duties (Flying) Branch¹⁹ and that, if technical knowledge may be in issue, an officer of the branch concerned with that technical knowledge may be appointed²⁰. The air force does not appoint doctors, dentists, nurses or members of the medical secretarial or medical technical branches or directors of music to sit on courts-martial²¹.

A court-martial for the trial of a charge of rape, indecent assault on a woman or any offence against young children (and, in the army, a court-martial for the trial of a woman) must, where practicable, include at least one female member²².

Both codes of regulations indicate that where a civilian is to be tried two Crown servants may sit on a general court-martial and one on a district court-martial provided they are subject to military or air force law²³.

- 1 As to the composition of army and air force courts-martial see para 482 ante.
- 2 Army Act 1955 s 84C(4)(a) (s 84C added by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 19); Air Force Act 1955 s 84C(4)(a) (s 84C added by the Armed Forces Act 1996 Sch 1 paras 33, 35). As to the court administration officer see para 480 note 5 ante.
- 3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 17(a)(iii) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 17(a)(iii) (amended by SI 2002/229). As to the making of these rules see para 487 post.
- 4 le any officer who at any time between the date on which the preliminary charge was reported to the commanding officer of the accused and the date of trial was the accused's commanding officer: Army Act 1955 s 84C(4)(b); Air Force Act 1955 s 84C(4)(b) (both as added: see note 2 supra). For these purposes, 'preliminary charge' means the charge referred to higher authority by the accused's commanding officer: Army Act 1955 s 84C(5); Air Force Act 1955 s 84C(5) (both as so added).
- 5 Army Act 1955 s 84C(4)(c); Air Force Act 1955 s 84C(4)(c) (both as added: see note 2 supra).
- 6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 17(a)(i) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 17(a)(i) (amended by SI 2002/229).
- 7 Army Act 1955 s 84C(4)(d); Air Force Act 1955 s 84C(4)(d) (both as added: see note 2 supra).
- 8 Army Act 1955 s 84C(4)(e) (as added (see note 2 supra); and amended by the Armed Forces Act 2001 s 19, Sch 2 para 1(1), (3)); Air Force Act 1955 s 84C(4)(e) (as added (see note 2 supra); and amended by the Armed Forces Act 2001 Sch 2 para 8(1), (3)).
- 9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 17(a)(ii) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 17(a)(ii) (amended by SI 2002/229).
- 10 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.
- 11 Courts-Martial (Army) Rules 1997, SI 1997/169, r 17(b) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 17(b) (amended by SI 2002/229). Persons disqualified by this provision are: (1) persons having a general qualification (see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) advocates and solicitors in Scotland; (3) members of the Bar of Northern Ireland; (4) solicitors of the Supreme Court of Northern Ireland; and (5) persons who have in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales and are subject to punishment or disability for breach of professional rules: Courts-Martial (Army) Rules 1997, SI 1997/169, r 17(b)(i)-(iv); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 17(b)(i)-(iv). As to the meaning of 'Commonwealth country' see para 20 note 6 ante.
- 12 Queen's Regulations for the Army 1975 para 6.103.
- 13 Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154(1)(f).
- 14 Queen's Regulations for the Army 1975 para 6.104; Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154(1)(b).
- 15 Queen's Regulations for the Army 1975 para 6.105.
- 16 Ibid Ch 6 para 6.106.
- 17 Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154(1)(d).
- 18 Queen's Regulations for the Army 1975 para 6.107; Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154(1)(f).
- 19 Ibid Ch 16 para 1154(1)(d).
- 20 Ibid Ch 16 para 1154(1)(c).
- 21 Ibid Ch 16 para 1154(1)(d).
- 22 Queen's Regulations for the Army 1975 para 6.108; Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154(1)(e).

23 Queen's Regulations for the Army 1975 para 6.108A; Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1154(1)(h).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(i) Constitution and Jurisdiction/484. Appointment and duties of judge advocate.

484. Appointment and duties of judge advocate.

For these purposes, 'the judge advocate' is the person appointed by or on behalf of the Judge Advocate General¹ to be a member of a court-martial². No person may be appointed as a judge advocate unless he is either: (1) a person who has a five year general qualification³; (2) an advocate in Scotland of at least five years' standing, or a solicitor who has had a right of audience in the Court of Session or the High Court of Justiciary for at least five years⁴; or (3) a member of the Bar of Northern Ireland of at least five years' standing⁵. The role of the judge advocate in an army or air force court-martial is to give rulings and directions on questions of law, including procedure and practice, which are binding on the court⁶. He is required to conduct the trial in accordance with the law of England and Wales⁷.

1 As to the appointment and duties of the Judge Advocate General, the Vice Judge Advocate General and the Assistant Judge Advocate General see paras 446-447 ante.

2 Army Act 1955 s 84B(1) (s 84B added by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 19); Air Force Act 1955 s 84B(1) (s 84B added by the Armed Forces Act 1996 Sch 1 paras 33, 35).

3 Army Act 1955 s 84B(2)(a); Air Force Act 1955 s 84B(2)(a) (both as added: see note 2 supra). For these purposes, a general qualification is a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts: see the Army Act 1955 s 84B(2)(a); and the Air Force Act 1955 s 84B(2)(a) (both as so added). See also the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742.

4 Army Act 1955 s 84B(2)(b); Air Force Act 1955 s 84B(2)(b) (both as added: see note 2 supra).

5 Army Act 1955 s 84B(2)(c); Air Force Act 1955 s 84B(2)(c) (both as added: see note 2 supra).

6 Army Act 1955 s 84B(3), (4); Air Force Act 1955 s 84B(3), (4) (both as added: see note 2 supra). Where for any reason the judge advocate is of the opinion that he should rule on a question in the absence of the other members of the court he may direct those other members to withdraw: Courts-Martial (Army) Rules 1997, SI 1997/169, r 43(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 43(1)(b). As to the making of these rules see para 487 post.

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 32(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 32(1). The judge advocate may ask questions on his own behalf or on behalf of the president or a member of the court if he considers it appropriate: Courts-Martial (Army) Rules 1997, SI 1997/169, r 62(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 62(2). As to the conduct of the trial see para 497 et seq post.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(i) Constitution and Jurisdiction/485. Sitting, adjournment and dissolution of courts-martial.

485. Sitting, adjournment and dissolution of courts-martial.

An order convening a district or general court-martial¹ must specify the date, time and place at which the court-martial is to sit². The court must then sit at that place (which may be within or without the United Kingdom)³ at such times and for such periods each day as seem to it to be reasonable in the circumstances⁴, and may adjourn for the purpose of sitting at an alternative place if it appears requisite in the interests of justice so to do⁵. Although these decisions are expressed as being in the gift of the court, they and other matters relating to sittings, such as adjournments⁶, are in practice for the judge advocate to decide in pursuance of his power to give rulings and directions on questions of procedure⁷.

The court administration officer⁸ and the judge advocate also have power by order to dissolve the court-martial where it appears to them necessary or expedient in the interests of the administration of justice so to do⁹. This power may be exercised by the court administration officer at any time before trial commences¹⁰, and by the judge advocate thereafter¹¹, from which time the judge advocate is also empowered to dissolve the court if it is for whatever reason reduced below the legal minimum membership¹², if the president dies or is otherwise unable to attend (whether or not the legal minimum is reached)¹³, and at the conclusion of the trial¹⁴. Where the court-martial is dissolved under these provisions before the conclusion of the trial, the accused may be tried by another court¹⁵. The judge advocate must also dissolve the court if at any time after the commencement of the trial¹⁶ he allows any challenge, objection, plea or application such that there is no charge remaining to which the accused can be required to plead¹⁷.

1 As to the convening of army and air force courts-martial see para 488 ante. As to the composition of courts-martial see para 482 et seq ante.

2 Army Act 1955 s 84C(2)(a) (ss 84B, 84C added by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 19); Air Force Act 1955 s 84C(2)(a) (ss 84B, 84C added by the Armed Forces Act 1996 Sch 1 paras 33, 35).

3 Army Act 1955 s 91(1) (amended by the Armed Forces Act 1996 s 35(2), Sch 1 paras 17, 22(1), (2), Sch 7 Pt I); Air Force Act 1955 s 91(1) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 38(1), (2), Sch 7 Pt I). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 34(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 34(3). As to the making of these rules see para 487 post. The court may not, however, sit on Saturday, Sunday, Christmas Day or Good Friday unless in its opinion it is necessary to do so: Courts-Martial (Army) Rules 1997, SI 1997/169, r 34(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 34(2). See also the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1159, which provides that 'the hours which courts-martial are ordinarily to sit will invariably be regulated by the judge advocate appointed for the trial'.

5 Army Act 1955 s 91(2) (amended by the Armed Forces Act 1996 Sch 1 paras 17, 22(1), (3)); Air Force Act 1955 s 91(2) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 38(1), (3)).

6 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 34(1); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 34(1).

7 See the Army Act 1955 s 84B(3); and the Air Force Act 1955 s 84B(3) (both as added: see note 2 supra). As to the powers of the judge advocate see para 484 ante. As to the inclusion of the judge advocate in the constitution of the court-martial see para 482 ante.

8 As to the court administration officer see para 480 note 5 ante.

9 Army Act 1955 s 95(1), (1A) (s 95(1) amended, and s 95(1A) added, by the Armed Forces Act 1996 Sch 1 paras 17, 26(1)-(3)); Air Force Act 1955 s 95(1), (1A) (s 95(1) amended, and s 95(1A) added, by the Armed Forces Act 1996 Sch 1 paras 33, 42(1)-(3)).

10 Army Act 1955 s 95(1); Air Force Act 1955 s 95(1) (both as amended: see note 9 supra).

11 Army Act 1955 s 95(1A); Air Force Act 1955 s 95(1A) (both as added: see note 9 supra).

12 Army Act 1955 s 95(2); Air Force Act 1955 s 95(2). As to the legal minimum membership of a court-martial see para 482 ante.

13 Army Act 1955 s 95(3)(b); Air Force Act 1955 s 95(3)(b). As to the president of a court-martial see para 482 ante. In these circumstances the judge advocate may alternatively appoint the senior member of the court president if that person is of the rank of captain (in an army court-martial) or flight lieutenant (in an air force court-martial) or corresponding or higher rank, and the trial proceeds accordingly: Army Act 1955 s 95(3)(a) (amended by the Armed Forces Act 1996 Sch 1 paras 17, 26(1), (4)); Air Force Act 1955 s 95(3)(a) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 42(1), (4)).

14 Courts-Martial (Army) Rules 1997, SI 1997/169, r 81(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 81(2).

15 Army Act 1955 s 95(5); Air Force Act 1955 s 95(5).

16 See para 497 post.

17 Courts-Martial (Army) Rules 1997, SI 1997/169, r 42(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 42(2).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(i) Constitution and Jurisdiction/486. Finality of trial.

486. Finality of trial.

A person subject to military or air force law¹ is not liable to be tried by court-martial², or to be dealt with summarily by his commanding officer³ or the appropriate superior authority⁴, in respect of any offence⁵:

- 477 (1) for which he has been tried by a competent civil court, wherever situated, or a court-martial⁶;
- 478 (2) which has been taken into consideration in the sentencing of that person by any such court⁷;
- 479 (3) in connection with which a charge against him under the service discipline Acts has been dismissed by his commanding officer or the appropriate superior authority⁸;
- 480 (4) for which he has been charged under any of the service discipline Acts and had a finding that the charge has been proved recorded against him by his commanding officer or the appropriate superior authority⁹; or
- 481 (5) which has been condoned by his commanding officer (whether military, naval or air force)¹⁰.

1 As to the categories of persons subject to military or air force law see para 307 et seq ante.

2 These provisions also apply to proceedings before a standing civilian court (see the Armed Forces Act 1976 s 6, Sch 3 para 16; and para 521 post), and similar provisions apply in respect of the subsequent trial of offences by civilian criminal courts (see para 59 ante).

3 For the meaning of 'commanding officer' see para 353 note 4 ante.

4 As to the appropriate superior authority see para 354 note 8 ante. For these purposes, a case is deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding or award of that officer or authority has been quashed on review or quashed or varied by the summary appeal court: Army Act 1955 s 134(2)(c) (amended by the Armed Forces Discipline Act 2000 s 25, Sch 3 para 22); Air Force Act 1955 s 134(2)(c) (amended by the Armed Forces Discipline Act 2000 Sch 3 para 22). As to the review of summary awards and appeal to the summary appeal court see para 358 ante.

5 These provisions extend also to an offence which is substantially the same offence as an offence for which the person in question has already been tried, charged or condoned or which has been taken into consideration in sentencing that person: see the Army Act 1955 s 134(1) (amended by the Armed Forces Act 1991 s 26, Sch 2 para 5(1), (3)); Air Force Act 1955 s 134(1) (amended by the Armed Forces Act 1991 Sch 2 para 5(1), (3)).

6 Army Act 1955 s 134(1)(a) (substituted by the Armed Forces Act 1966 s 26(1)(a), (3)); Air Force Act 1955 s 134(1)(a) (substituted by the Armed Forces Act 1966 s 26(1)(a), (2), (3)). This provision encompasses a court-martial held under any of the service discipline Acts: Army Act 1955 s 134(1)(a); Air Force Act 1955 s 134(1)(a) (both as so substituted). As to the service discipline Acts see para 302 ante. As to the effect of proceedings before a civil court see para 57 ante. For these purposes, a person ordered to be imprisoned or to undergo detention under the Army Act 1955 s 57(2) (as amended) or, as the case may be, the Air Force Act 1955 s 57(2) (as amended), which make provision for summary dealing with offences before courts-martial (see para 411 ante), is deemed to have been tried by court-martial for the offence: Army Act 1955 s 134(2)(e); Air Force Act 1955 s 134(2)(e).

7 Army Act 1955 s 134(1)(aa) (added by the Armed Forces Act 1966 s 26(1)(b), (3)); Air Force Act 1955 s 134(1)(aa) (added by the Armed Forces Act 1966 s 26(1)(b), (2), (3)). For these purposes, a person may not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if the sentence is quashed (as well as in a case where the taking into consideration of the offence has been annulled by the reviewing authority): Army Act 1955 s 134(2)(b) (amended by the Armed Forces Act 1981 s 5(4)(b); and by the

Armed Forces Act 1996 s 35(2), Sch 7 Pt II); Air Force Act 1955 s 134(2)(b) (amended by the Armed Forces Act 1981 s 5(4)(b); and by the Armed Forces Act 1996 Sch 7 Pt II). As to the review of court-martial proceedings see para 512 post.

8 Army Act 1955 s 134(1)(b); Air Force Act 1955 s 134(1)(b).

9 Army Act 1955 s 134(1)(b) (amended by the Armed Forces Act 1996 Sch 1 paras 66, 67); Air Force Act 1955 s 134(1)(b) (amended by the Armed Forces Act 1996 s 5, Sch 1 paras 76, 77). As to summary dealing see note 4 supra.

10 Army Act 1955 s 134(1)(c); Air Force Act 1955 s 134(1)(c). For these purposes, an offence is deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged with it: Army Act 1955 s 134(2)(d); Air Force Act 1955 s 134(2)(d). Notwithstanding these provisions, however, proceedings for an offence against the Army Act 1955 or, as the case may be, the Air Force Act 1955 (whether before a commanding officer or appropriate superior authority or before a court-martial) are not barred on the ground of condonation: Army Act 1955 s 134(4); Air Force Act 1955 s 134(4).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

486 Finality of trial

TEXT AND NOTES--See now the Armed Forces Act 2006 ss 63-66.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (ii) The Court-Martial Rules/487. Power to make rules.

(ii) The Court-Martial Rules

487. Power to make rules.

The Secretary of State¹ may make rules² with respect to the investigation³, prosecution and trial of, and awarding of punishment for⁴, offences cognisable by courts-martial⁵, and for the review of findings and sentences of courts-martial⁶. Such rules may in particular make provision with respect to:

- 482 (1) preliminary proceedings, including the appointment of judge advocates⁷;
- 483 (2) the delegation by court administration officers of any of their functions⁸;
- 484 (3) the convening and constitution of the court⁹;
- 485 (4) sittings, adjournments and dissolution¹⁰;
- 486 (5) trial procedure¹¹;
- 487 (6) representation at trials and preliminary proceedings¹²;
- 488 (7) procuring the attendance of witnesses at trials and preliminary proceedings¹³;
- 489 (8) the amendment of charges¹⁴;
- 490 (9) the return of special findings¹⁵;
- 491 (10) the inspection of bankers' books¹⁶;
- 492 (11) the form of orders and documents¹⁷;
- 493 (12) the taking into consideration of offences in passing sentence¹⁸;
- 494 (13) the recording of proceedings¹⁹;
- 495 (14) the procedure for review of findings and sentence²⁰;
- 496 (15) the exercise of prosecutorial functions²¹ where an election for court-martial trial relates to two or more charges²²; and
- 497 (16) as from a day to be appointed, the making of orders for the payment of costs unnecessarily incurred²³.

Any rule made in pursuance of these provisions which is inconsistent with the relevant statutory provisions²⁴ is to the extent of the inconsistency void²⁵.

1 As to the Secretary of State see para 2 ante.

2 The power to make rules is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament: Army Act 1955 s 103(5) (s 103 substituted by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 30); Air Force Act 1955 s 103(5) (s 103 substituted by the Armed Forces Act 1996 Sch 1 paras 33, 46). As to the procedure for annulment see PARLIAMENT vol 34 (Reissue) para 945; STATUTES vol 44(1) (Reissue) para 1514 et seq.

3 As to the investigation of offences see para 318 et seq ante.

4 As to the punishment of offences see para 424 et seq ante.

5 Army Act 1955 s 103(1)(a); Air Force Act 1955 s 103(1)(a) (both as substituted: see note 2 supra).

6 Army Act 1955 s 103(1)(b); Air Force Act 1955 s 103(1)(b) (both as substituted: see note 2 supra).

7 Army Act 1955 s 103(2)(a), (b); Air Force Act 1955 s 103(2)(a), (b) (both as substituted: see note 2 supra). For preliminary proceedings see para 488 et seq post. As to the appointment and duties of the judge advocate see para 484 ante.

8 Army Act 1955 s 103(2)(c); Air Force Act 1955 s 103(2)(c) (both as substituted: see note 2 supra). As to the court administration officer and his functions see para 480 note 5 ante.

9 Army Act 1955 s 103(2)(d); Air Force Act 1955 s 103(2)(d) (both as substituted: see note 2 supra). As to the convening of courts-martial see para 488 post; as to their constitution see para 482 et seq ante.

10 Army Act 1955 s 103(2)(e); Air Force Act 1955 s 103(2)(e) (both as substituted: see note 2 supra). As to the sitting, adjournment and dissolution of courts-martial see para 485 ante.

11 Army Act 1955 s 103(2)(f); Air Force Act 1955 s 103(2)(f) (both as substituted: see note 2 supra). As to trial procedure see para 488 et seq post.

12 Army Act 1955 s 103(2)(g); Air Force Act 1955 s 103(2)(g) (both as substituted: see note 2 supra). As to representation see para 491 post.

13 Army Act 1955 s 103(2)(h); Air Force Act 1955 s 103(2)(h) (both as substituted: see note 2 supra). See further paras 503-504 post.

14 Army Act 1955 s 103(2)(i); Air Force Act 1955 s 103(2)(i) (both as substituted: see note 2 supra). See further para 496 post. The provision which may be made is that of enabling a court-martial, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court (see the Army Act 1955 s 103(2)(i); and the Air Force Act 1955 s 103(2)(i) (both as so substituted)), although rules making such provision must secure that the power to amend charges is not exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in England, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments are so amendable (Army Act 1955 s 103(3); Air Force Act 1955 s 103(3) (both as substituted: see note 2 supra)).

15 See the Army Act 1955 s 103(2)(j); and the Air Force Act 1955 s 103(2)(j) (both as substituted: see note 2 supra). These provide that rules may make provision for enabling a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence.

16 See the Army Act 1955 s 103(2)(k); and the Air Force Act 1955 s 103(2)(k) (both as substituted: see note 2 supra). These provide that rules may make provision for directing that the powers conferred by the Bankers' Books Evidence Act 1879 s 7, which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings (see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 911-915), may be exercised for the purposes of a court-martial (whether within or without the United Kingdom) by the commanding officer of the accused or a judge advocate. As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

17 Army Act 1955 s 103(2)(l); Air Force Act 1955 s 103(2)(l) (both as substituted: see note 2 supra). Forms are prescribed in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2.

18 Army Act 1955 s 103(2)(m); Air Force Act 1955 s 103(2)(m) (both as substituted: see note 2 supra). The rules may make provision for the cases in which, and the extent to which, offences may be taken into consideration and the powers of the court in relation to any such offences: Army Act 1955 s 103(2)(m); Air Force Act 1955 s 103(2)(m) (both as so substituted).

19 Army Act 1955 s 103(2)(n); Air Force Act 1955 s 103(2)(n) (both as substituted: see note 2 supra).

20 Army Act 1955 s 103(2)(o); Air Force Act 1955 s 103(2)(o) (both as substituted: see note 2 supra). As to review see para 512 post.

21 In the functions set out in the Army Act 1955 ss 83B, 83BB (both as added and amended) and the Air Force Act 1955 ss 83B, 83BB (both as added and amended): see para 315 ante.

22 Army Act 1955 s 103(3A) (s 103 as substituted (see note 2 supra); s 103(3A) added by the Armed Forces Discipline Act 2000 s 13, Sch 2 para 5); Air Force Act 1955 s 103(3A) (s 103 as substituted (see note 2 supra); s 103(3A) added by the Armed Forces Discipline Act 2000 Sch 2 para 5).

23 Army Act 1955 s 103(2)(mm) (s 103 as substituted (see note 2 supra); s 103(2)(mm) added by the Armed Forces Act 2001 s 28(4)); Air Force Act 1955 s 103(2)(mm) (s 103 as substituted (see note 2 supra); s 103(2)(mm) added by the Armed Forces Act 2001 s 28(4)). At the date at which this volume states the law no such day had been appointed. As to the making of such orders see para 513 post.

As from a day to be appointed, the rules may also make provision for the jurisdiction to make such orders to be exercised by the judge advocate sitting alone: Army Act 1955 s 103(2)(mm); Air Force Act 1955 s 103(2)(mm) (both as so substituted and added). At the date at which this volume states the law no such day had been appointed.

24 le the Army Act 1955 or the Air Force Act 1955, as the case may be.

25 Army Act 1955 s 103(4); Air Force Act 1955 s 103(4) (both as substituted: see note 2 supra).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/488. Convening army and air force courts-martial.

(iii) Proceedings before Trial

488. Convening army and air force courts-martial.

The officer responsible for convening a district or general court-martial is the court administration officer¹ who, on being notified by the prosecuting authority² of the charge preferred³ and the description of court-martial by which the charge is to be tried, must by order convene a court-martial of that description to try the accused⁴. The convening order must specify the date, time and place at which the court-martial is to sit⁵, the officers who are to be members of the court⁶, which officer is to be president⁷, any warrant officers who are to be members of the court⁸, and any other officers or warrant officers appointed for the purposes of filling vacancies⁹, and must state that a judge advocate appointed by or on behalf of the Judge Advocate General is to be a member of the court-martial¹⁰. The court administration officer may amend or withdraw the convening order at any time before the commencement of the trial¹¹, provided that he serves a copy of the amended order, or notice in writing as appropriate, on the persons on whom copies of the original order were required to be served¹²; but he may not withdraw the order after the time appointed for the trial¹³.

1 As to district and general courts-martial see para 480 et seq ante. As to the court administration officer see para 480 note 5 ante.

2 I.e. the officer appointed by Her Majesty to be the prosecuting authority: Army Act 1955 ss 83A(1), 225(1) (s 83A added by the Armed Forces Act 1996 s 5, Sch 1 para 14; Army Act 1955 s 225(1) amended by the Armed Forces Act 1996 Sch 1 paras 66, 74(d)); Air Force Act 1955 ss 83A(1), 223(1) (s 83A added by the Armed Forces Act 1996 s 5, Sch 1 para 15; Air Force Act 1955 s 223(1) amended by the Armed Forces Act 1996 Sch 1 paras 76, 84(d)). As to the appointment and duties of the prosecuting authorities for the army and the air force see para 315 ante.

3 The prosecutor must notify the court administration officer of any charge which he has preferred by sending to him a copy of the prosecution papers, and on receipt of such copy the court administration officer must send a copy of the prosecution papers to the Judge Advocate General (or his deputy): Courts-Martial (Army) Rules 1997, SI 1997/169, r 10; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 10. 'The prosecutor' means the prosecuting authority or any prosecuting officer appointed by the prosecuting authority: Courts-Martial (Army) Rules 1997, SI 1997/169, r 2; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 2. As to the prosecution papers see para 489 post. As to the making of rules see para 487 ante.

4 Army Act 1955 s 84C(1) (s 84C added by the Armed Forces Act 1996 Sch 1 paras 17, 19); Air Force Act 1955 s 84C(1) (s 84C added by the Armed Forces Act 1996 Sch 1 paras 33, 35); Courts-Martial (Army) Rules 1997, SI 1997/169, r 16(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 16(1). The order convening a district or general court-martial will state whether the trial is for a general or district court-martial even though this decision is for the prosecuting authority and may be varied by that authority: see the Army Act 1955 s 83B(4) (as added); the Air Force Act 1955 s 83B(4) (as added); the Courts-Martial (Army) Rules 1997, SI 1997/169, r 13; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 13; and para 315 ante.

5 Army Act 1955 s 84C(2)(a); Air Force Act 1955 s 84C(2)(a) (both as added: see note 4 supra). As to sittings see para 485 ante.

6 Army Act 1955 s 84C(2)(b); Air Force Act 1955 s 84C(2)(b) (both as added: see note 4 supra). As to the officer members of the court see para 482 ante.

7 Army Act 1955 s 84C(2)(c); Air Force Act 1955 s 84C(2)(c) (both as added: see note 4 supra). As to the president of the court see para 482 ante.

8 Army Act 1955 s 84C(2)(cc) (s 84C as added (see note 4 supra); s 84C(2)(cc) added by the Armed Forces Act 2001 s 19, Sch 2 para 1(1), (2)(a)); Air Force Act 1955 s 84C(2)(cc) (s 84C as added (see note 4 supra); s 84C(2)(cc) added by the Armed Forces Act 2001 Sch 2 para 8(1), (2)(a)). As to the warrant officer members of the court see para 482 ante.

9 Army Act 1955 s 84C(2)(d) (as added (see note 4 supra); and amended by the Armed Forces Act 2001 Sch 2 para 1(1), (2)(b)); Air Force Act 1955 s 84C(2)(d) (as added (see note 4 supra); and amended by the Armed Forces Act 2001 Sch 2 para 8(1), (2)(b)).

10 Army Act 1955 s 84C(2); Air Force Act 1955 s 84C(2) (both as added: see note 4 supra). As to the appointment and duties of the Judge Advocate General see paras 446-447 ante. As to the appointment and duties of judge advocates see para 484 ante. A copy of the convening order must be served on the accused, the officer members of the court, any warrant officer members of the court, the Judge Advocate General (or his deputy) and the prosecuting authority, not less than 24 hours before the time appointed for the trial: Courts-Martial (Army) Rules 1997, SI 1997/169, r 16(2) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 16(2) (amended by SI 2002/230). As to the service of documents see para 490 post.

11 Army Act 1955 s 84C(3); Air Force Act 1955 s 84C(3) (both as added: see note 4 supra).

12 Courts-Martial (Army) Rules 1997, SI 1997/169, r 16(3) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 16(3) (amended by SI 2002/230). As to the persons on whom copies of a convening order are required to be served see note 10 supra.

13 Courts-Martial (Army) Rules 1997, SI 1997/169, r 16(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 16(4).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/489. Notification of accused.

489. Notification of accused.

Where the prosecutor¹ has preferred a charge against an accused to be tried by general or district court-martial, he must notify the accused's commanding officer² of the charge by sending to that officer the prosecution papers³, which comprise:

- 498 (1) a copy of the charge-sheet⁴;
- 499 (2) a list of any witnesses whom the prosecutor proposes to call⁵;
- 500 (3) copies of any statements of the prosecution witnesses, or other record of their evidence⁶;
- 501 (4) a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts⁷;
- 502 (5) a copy of any conduct sheets of the accused⁸; and
- 503 (6) a list of all unused material⁹,

and as soon as practicable after being so notified, the accused's commanding officer must notify the accused that he is to be tried by court-martial¹⁰.

1 For the meaning of 'the prosecutor' see para 488 note 3 ante.

2 For these purposes, 'commanding officer', in relation to an accused, means such officer having powers of command over that person as may be determined by or under regulations of the Defence Council made under the Army Act 1955 s 82(1) or the Air Force Act 1955 s 82(1) (see para 353 ante), as the case may be: Courts-Martial (Army) Rules 1997, SI 1997/169, r 2; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 2. As to the Defence Council see para 2 ante. Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work.

3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(1). As to the making of rules see para 487 ante. As to the service of documents see para 490 post.

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(2)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(2)(a). As to the charge-sheet see para 496 post.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(2)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(2)(b).

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(2)(c); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(2)(c). If before the commencement of the trial (see para 497 post) the prosecutor wishes to adduce at trial any evidence additional to that contained in the prosecution papers, he must serve a copy of the additional evidence (or details of its whereabouts) on the accused and the court administration officer: Courts-Martial (Army) Rules 1997, SI 1997/169, r 20; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 20. As to the court administration officer see para 480 note 5 ante.

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(2)(d); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(2)(d).

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(2)(e); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(2)(e).

9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 9(2)(f); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 9(2)(f).

10 Courts-Martial (Army) Rules 1997, SI 1997/169, r 11(1), (2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 11(1), (2). On so notifying the accused, the commanding officer must serve him with: the prosecution papers; a statement explaining the effect of the Criminal Justice Act 1967 s 11 (as amended) (notice of alibi: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1384) and a form for the accused's notice of alibi (if so required by the prosecutor); a form for notifying the court administration officer of the accused's legal adviser; and a form for acknowledgement of receipt: Courts-Martial (Army) Rules 1997, SI 1997/169, r 11(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 11(3). Although the Criminal Justice Act 1967 s 11 has been repealed for other purposes by the Criminal Procedure and Investigations Act 1996 s 74(1), (4), this does not affect its application to proceedings before courts-martial: s 74(3).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

489 Notification of accused

NOTE 10--Criminal Procedure and Investigations Act 1996 s 74(3) repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/490. Service of documents.

490. Service of documents.

Unless the context otherwise requires, any document or notice to be served on an accused by the court administration officer¹ or the prosecutor² may be served by sending it to the commanding officer³ of the accused⁴, whereupon that officer or a person acting on his behalf must serve it on the accused as soon as is practicable⁵. Where the accused is aged under 17 and is charged with an offence alleged to have been committed during a period of parental recognisance⁶, any document required to be served on him by the court administration officer or the prosecutor must as soon as practicable also be served on a parent or guardian of the accused who is a service parent or guardian⁷.

1 As to the court administration officer see para 480 note 5 ante.

2 For the meaning of 'the prosecutor' see para 488 note 3 ante.

3 For the meaning of 'commanding officer' see para 489 note 2 ante.

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 3(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 3(1). As to the making of rules see para 487 ante.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 3(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 3(2).

6 For these purposes, 'period of parental recognisance' means the period specified in an order made under the Army Act 1955 Sch 5A para 14(1), the Air Force Act 1955 Sch 5A para 14(1), or the Naval Discipline Act 1957 Sch 4A para 14(1) (all as added and amended) (see paras 432, 438 ante), as the case may be: Courts-Martial (Army) Rules 1997, SI 1997/169, rr 2, 84, Sch 6 Pt I; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 2, 84, Sch 6 Pt I.

7 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 Pt II para 2(1), (2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 Pt II para 2(1), (2). For the meaning of 'service parent or guardian' see para 438 note 5 ante (definition applied by the Courts-Martial (Army) Rules 1997, SI 1997/169, r 2, Sch 6 Pt I; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 2, Sch 6 Pt I). The court administration officer must serve a witness summons in respect of any parent or guardian on whom a document has been so served to attend the court-martial: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 Pt II para 2(1), (4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 Pt II para 2(1), (4).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/491. Preparation and conduct of accused's defence.

491. Preparation and conduct of accused's defence.

An accused who has been notified that he is to be tried by court-martial must be afforded a proper opportunity to prepare his defence¹, to assist him in the preparation and conduct of which his commanding officer² must, unless the accused states in writing that he does not wish it, appoint a defending officer³. The accused may also appoint a legal adviser to act for him, and any right or responsibility which accrues to the accused⁴, except pleading to a charge, may be exercised by that adviser on the accused's behalf⁵.

1 Courts-Martial (Army) Rules 1997, SI 1997/169, r 15(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 15(1). As to the making of rules see para 487 ante.

2 For the meaning of 'commanding officer' see para 489 note 2 ante.

3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 15(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 15(2). If the accused is a civilian, the commanding officer (which in such a case means such officer as may be determined by or under regulations of the Defence Council made under the Army Act 1955 s 209(3) (f) or, as the case may be, the Air Force Act 1955 s 209(3)(f)) may only appoint a defending officer if the accused requests it: Courts-Martial (Army) Rules 1997, SI 1997/169, rr 15(2), 84, Sch 6 Pt I; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 15(2), 84, Sch 6 Pt I.

4 Ie by virtue of the Courts-Martial (Army) Rules 1997, SI 1997/169 (as amended) or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171 (as amended).

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 15(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 15(3). The accused must inform the court administration officer (see para 480 note 5 ante) of the name and address of his legal adviser as soon as is practicable after a legal adviser has been appointed: Courts-Martial (Army) Rules 1997, SI 1997/169, r 15(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 15(4). A legal adviser may represent an accused at a formal preliminary examination (see para 315 ante), at any preliminary proceedings (ie a hearing for directions and any preparatory hearing (see paras 492-493 post)) and before a court-martial provided he is: (1) a person having a general qualification (see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) an advocate or solicitor in Scotland; (3) a member of the Bar of Northern Ireland; (4) a solicitor of the Supreme Court of Northern Ireland; or (5) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales and is subject to punishment or disability for breach of professional rules: Courts-Martial (Army) Rules 1997, SI 1997/169, r 15(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 15(5). As to the meaning of 'Commonwealth country' see para 20 note 6 ante.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/492. Hearing for directions.

492. Hearing for directions.

A hearing for directions may be convened for the purpose of addressing any of the following matters:

- 504 (1) the issues in the case¹;
- 505 (2) issues, if any, as to the mental or medical condition of any defendant or witness²;
- 506 (3) the number of witnesses whose evidence will be placed before the court either orally or in writing³;
- 507 (4) the defence witnesses whose statements have been served and whose evidence the prosecution will agree and accept in writing⁴;
- 508 (5) any prosecution witnesses whom the defence requires to attend at the trial⁵;
- 509 (6) any additional witnesses who may be called by the prosecution and the evidence that they are expected to give⁶;
- 510 (7) facts which are to be admitted and which can be reduced into writing⁷, within such time as may be directed at the hearing, and of any witness whose attendance will not be required at the trial⁸;
- 511 (8) any exhibits and schedules which are to be admitted⁹;
- 512 (9) the order and pagination of the papers to be used by the prosecution at the trial and the order in which the prosecution witnesses are likely to be called¹⁰;
- 513 (10) any alibi which should already have been disclosed¹¹;
- 514 (11) any point of law which it is anticipated will arise at trial¹²;
- 515 (12) any question as to the admissibility of evidence which appears on the face of the papers, and any authority on which the party intends to rely¹³;
- 516 (13) any application to be made for evidence to be given through live television link¹⁴;
- 517 (14) any application to submit pre-recorded video interviews with a child witness as evidence in chief¹⁵;
- 518 (15) any application for screens, for use by witnesses seeking a visual break between themselves and any relevant parties¹⁶;
- 519 (16) whether any video, tape recorder or other technical equipment will be required during a trial¹⁷;
- 520 (17) where a tape recorded interview has taken place, of any dispute or agreement as to the accuracy of any transcript or summary¹⁸;
- 521 (18) any other significant matter which might affect the proper and convenient trial of the case, and whether any additional work needs to be done by the parties¹⁹;
- 522 (19) the estimated length of the trial, to be agreed more precisely taking account of any views expressed by the judge advocate²⁰ and the other parties²¹;
- 523 (20) witness availability and the approximate length of witness evidence²²;
- 524 (21) availability of advocate²³; and
- 525 (22) whether there is a need for any further directions²⁴.

The prosecutor²⁵ and the accused may apply to the judge advocate for a direction to be given to the court administration officer²⁶ to convene a hearing for directions²⁷, and in response to such an application the judge advocate may direct the convening of the hearing²⁸. He may also direct the convening of a hearing of his own motion²⁹. Before directing the convening of a

hearing, the judge advocate must in general afford each party to the proceedings the opportunity of making written representations to him³⁰.

On receipt of a direction to convene a hearing for directions, the court administration officer must:

- 526 (a) appoint the date, time and place at which the hearing will take place³¹;
- 527 (b) issue, and serve on the parties to the proceedings³², a notice in writing listing the date, time and place so appointed and the matters to be addressed at the hearing³³; and
- 528 (c) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter³⁴.

The judge advocate may also direct that in advance of the hearing the prosecutor is to prepare an outline of the prosecution case and to serve a copy of it on the judge advocate and the accused³⁵.

The hearing itself takes place before the judge advocate in chambers, and in general the only persons who may be present are the court administration officer, the accused and his legal adviser, the court recorder, and any interpreter³⁶. At the hearing the parties address the judge advocate on such of the matters as are indicated in the convening notice³⁷ and any other matters which may be raised by the judge advocate or any party³⁸, and the judge advocate may make such directions as appear to him to be necessary to secure the proper and efficient trial of the case³⁹. The court administration officer must then serve a copy of the record of the hearing on the judge advocate, the prosecutor and the accused before the court-martial⁴⁰.

1 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25, Sch 4 para 1; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25, Sch 4 para 1. As to the making of rules see para 487 ante.

2 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 2; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 2.

3 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 3; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 3.

4 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 4; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 4.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 5; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 5.

6 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 6; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 6.

7 le in accordance with the Criminal Justice Act 1967 s 10(2)(b) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1538).

8 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 7; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 7.

9 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 8; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 8.

10 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 9; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 9.

11 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 10; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 10. As to the disclosure of alibis see the Criminal Justice Act 1967 s 11 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1384. Although s 11 has been repealed for other purposes by the Criminal Procedure and Investigations Act 1996 s 74(1), (4), this does not affect its application to proceedings before courts-martial: s 74(3).

12 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 11; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 11.

13 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 12; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 12.

14 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 13; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 13.

15 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 14; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 14.

16 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 15; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 15.

17 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 16; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 16.

18 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 17; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 17.

19 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 18; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 18.

20 In relation to preliminary proceedings (ie the hearing for directions and any preparatory hearing, but not a formal preliminary examination), 'the judge advocate' means the judge advocate appointed by or on behalf of the Judge Advocate General to conduct any preliminary proceedings: Courts-Martial (Army) Rules 1997, SI 1997/169, r 2; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 2. As to the appointment and duties of the Judge Advocate General see paras 446-447 ante. As to the appointment and duties of the judge advocate see para 484 ante. As to preparatory hearings see para 493 post; and as to formal preliminary examinations see para 315 ante.

21 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 19; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 19.

22 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 20; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 20.

23 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 21; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 21.

24 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 para 22; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4 para 22.

25 For the meaning of 'the prosecutor' see para 488 note 3 ante.

26 As to the court administration officer see para 480 note 5 ante.

27 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(1)(b). An application for a hearing for directions must be made to the Judge Advocate General (or his deputy) in the form set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2 Form 3 or (as the case may be) the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2 Form 3, and must specify the reason for which it is made: Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(2). An applicant for a hearing for directions must serve notice of the application in writing on every other party to the proceedings and the court administration officer (Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(3)), unless the applicant is the prosecutor and it is desirable in the public interest to seek a direction from the judge advocate without giving notice to the accused, in which case the judge advocate determines whether such a hearing is necessary in the interests of justice and, if he so determines, must direct that the hearing for directions is to proceed without notice to, and the participation of, the accused (Courts-Martial (Army) Rules 1997, SI 1997/169, rr 25(3), 28; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 25(3), 28). As to the service of documents on an accused see para 490 ante.

28 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(1)(b).

29 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(1)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(1)(a).

30 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(4). The judge advocate is not required to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay, or where the application is made for a hearing in the absence of the accused (ie in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, r 28 or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 28) (see note 27 supra): Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(5).

31 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(6)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(6)(a).

32 The requirement for service on the parties may be waived where the application is made for a hearing in the absence of the accused (ie in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, r 28 or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 28) (see note 27 supra): see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(6)(d); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(6)(d).

33 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(6)(b)-(d); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(6)(b)-(d). The matters to be listed are such of those that may be addressed (see the text and notes 1-24 supra) as the judge advocate may request: Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(6)(c); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(6)(c).

34 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(6)(e); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(6)(e).

35 Courts-Martial (Army) Rules 1997, SI 1997/169, r 25(7); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 25(7).

36 Courts-Martial (Army) Rules 1997, SI 1997/169, r 26; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 26. The hearing may take place in the absence of the accused where application was made for such a hearing in the interests of justice (ie in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, r 28 or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 28) (see note 27 supra): see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 26(2); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 26(2).

37 Ie such of the matters contained in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 4 or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 4, as the case may be (see the text and notes 1-24 supra), as the judge advocate has requested (see the text and note 33 supra).

38 Courts-Martial (Army) Rules 1997, SI 1997/169, r 27(1), (2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 27(1), (2).

39 Courts-Martial (Army) Rules 1997, SI 1997/169, r 27(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 27(3).

40 Courts-Martial (Army) Rules 1997, SI 1997/169, r 27(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 27(4). A copy of the record need not be served on the accused where the hearing has been convened in his absence (ie in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, r 28 or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 28) (see note 27 supra): see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 27(4); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 27(4).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

492 Hearing for directions

NOTE 11--Criminal Procedure and Investigations Act 1996 s 74(3) repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/493. Preparatory hearings.

493. Preparatory hearings.

As an alternative to a hearing for directions¹, a preparatory hearing may be held, at which a judge advocate² may make an order or ruling on any question as to the admissibility of evidence or any other question of law, practice or procedure relating to the case³. The prosecutor⁴ and the accused may apply to the judge advocate for a direction to be given to the court administration officer⁵ to convene a preparatory hearing⁶, and in response to such an application the judge advocate may direct the convening of a hearing⁷. The judge advocate may also direct the convening of a preparatory hearing of his own motion⁸. Before directing the convening of a hearing, the judge advocate must in general afford each party to the proceedings the opportunity of making written representations to him⁹.

On receipt of a direction to convene a preparatory hearing, the court administration officer must:

- 529 (1) appoint the date, time and place at which the hearing will take place¹⁰;
- 530 (2) issue, and serve on the parties to the proceedings, a notice in writing listing the date, time and place so appointed¹¹; and
- 531 (3) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter¹².

1 As to the convening of a hearing for directions see para 492 ante.

2 As to the judge advocate in relation to preliminary proceedings see para 492 note 20 ante. As to the appointment and duties of the judge advocate generally see para 484 ante. At the commencement of the preparatory hearing the accused may object to the judge advocate: Courts-Martial (Army) Rules 1997, SI 1997/169, r 30(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 30(1).

3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 31(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 31(1). Any such order or ruling has effect until the conclusion of the court-martial trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged: Courts-Martial (Army) Rules 1997, SI 1997/169, r 31(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 31(2). As to the making of rules see para 487 ante.

4 For the meaning of 'the prosecutor' see para 488 note 3 ante.

5 As to the court administration officer see para 480 note 5 ante.

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(1)(b). An application for a preparatory hearing must be made to the judge advocate in the form set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2 Form 4 or (as the case may be) the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2 Form 4, and must specify the reason for which it is made: Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(2). An applicant for a preparatory hearing must serve notice of the application in writing, with a time estimate of the length of the proposed hearing, on every other party to the proceedings and the court administration officer: Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(3). As to the service of documents on an accused see para 490 ante.

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(1)(b).

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(1)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(1)(a).

9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(4). The judge advocate is not required to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so or would cause unnecessary delay: Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(5).

10 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(6)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(6)(a).

11 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(6)(b), (c); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(6)(b), (c).

12 Courts-Martial (Army) Rules 1997, SI 1997/169, r 29(6)(d); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 29(6)(d). At the commencement of the preparatory hearing the judge advocate must administer an oath to any interpreter, to whom the accused is entitled at that point in the proceedings to object: Courts-Martial (Army) Rules 1997, SI 1997/169, r 30(1), (2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 30(1), (2).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/494. Pre-trial hearings.

494. Pre-trial hearings.

A pre-trial hearing may be held, at which the judge advocate¹ may make an order or ruling on any question as to the admissibility of evidence or any other question of law, practice or procedure relating to the case². The prosecutor³ and the accused may apply to the judge advocate for a direction to be given to the court administration officer to convene a pre-trial hearing⁴, and in response to such an application the judge advocate may direct the convening of a hearing⁵. The judge advocate may also direct the convening of a pre-trial hearing of his own motion⁶. Before directing the convening of a hearing, the judge advocate must in general afford each party to the proceedings the opportunity of making written representations to him⁷.

On receipt of a direction to convene a pre-trial hearing, the court administration officer must issue an order convening the court-martial⁸ or, if such order has already been issued, amend it⁹, so that the order specifies:

- 532 (1) the date and time at which the pre-trial hearing before the judge advocate is to take place¹⁰; and
- 533 (2) the date and time at which the officer members and any warrant officer members of the court must convene for the trial¹¹.

These provisions do not prevent the judge advocate from ordering a pre-trial hearing after the full court has assembled¹².

Provisions relating to the objection to, and swearing-in of, court members are applied also to pre-trial hearings¹³.

1 As to the judge advocate in relation to preliminary proceedings see para 492 note 20 ante. As to the appointment and duties of the judge advocate generally see para 484 ante.

2 Courts-Martial (Army) Rules 1997, SI 1997/169, r 39(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 39(1). As to the making of rules see para 487 ante. Any such order or ruling has effect until the conclusion of the court-martial trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged: Courts-Martial (Army) Rules 1997, SI 1997/169, r 39(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 39(2). If the judge advocate allows any application such that there is no charge remaining to which the accused can be required to plead, he must direct the court administration officer to dissolve the court: Courts-Martial (Army) Rules 1997, SI 1997/169, r 39(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 39(3). As to the court administration officer see para 480 note 5 ante.

3 For the meaning of 'the prosecutor' see para 488 note 3 ante.

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(1)(b). An application for a pre-trial hearing must be made to the judge advocate in the form set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2 Form 5 or (as the case may be) the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2 Form 5, and must specify the reason for which it is made: Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(2). An applicant for a pre-trial hearing must serve notice of the application in writing, with a time estimate of the length of the proposed hearing, on every other party to the proceedings and the court administration officer: Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(3). As to the service of documents on an accused see para 490 ante.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(1)(b).

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(1)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(1)(a).

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(4). The judge advocate is not required to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so or would cause unnecessary delay: Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(5).

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(6)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(6)(a).

9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(6)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(6)(b).

10 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(6)(i); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(6)(i).

11 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(6)(ii) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(6)(ii) (amended by SI 2002/230).

12 Courts-Martial (Army) Rules 1997, SI 1997/169, r 37(7); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 37(7).

13 See the Courts-Martial (Army) Rules 1997, SI 1997/169, rr 38, 40, 41; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 38, 40, 41; and para 497 post.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/495. Summoning of witnesses for preliminary proceedings.

495. Summoning of witnesses for preliminary proceedings.

The court administration officer¹ may summon on behalf of the accused any person whom the accused reasonably requires to give evidence at preliminary proceedings², and must notify the accused of this as soon as is practicable after the accused has been notified that he is to be tried by court-martial³; however, the court administration officer may decide not to summon any witness so requested where in his opinion it is not reasonable so to do, in which event he must inform the accused, the Judge Advocate General⁴ (or his deputy) and the prosecutor⁵ in writing of his decision and the reason for it⁶.

The court administration officer may issue a witness summons⁷ in respect of any person required to give evidence at any preliminary proceedings⁸.

1 As to the court administration officer see para 480 note 5 ante.

2 For the meaning of 'preliminary proceedings' see para 492 note 20 ante.

3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 22(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 22(1). As to the making of rules see para 487 ante. As to the notification of the accused that he is to be tried by court-martial see para 489 ante. If the accused requests the court administration officer to summon a witness, the accused must provide sufficient information in sufficient time to enable a summons to be served: Courts-Martial (Army) Rules 1997, SI 1997/169, r 22(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 22(2).

4 As to the appointment and duties of the Judge Advocate General see paras 446-447 ante.

5 For the meaning of 'the prosecutor' see para 488 note 3 ante.

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 22(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 22(3). In this event, a hearing for directions may be convened (see para 492 ante) to order that the witnesses be summonsed if appropriate.

7 A witness summons (which includes a summons to a bank manager for the purposes of the Bankers' Books Evidence Act 1879) must be issued in the form set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2 Form 1 (witnesses) or Form 2 (bank managers) or (as the case may be) the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2 Form 1 (witnesses) or Form 2 (bank managers): Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(1). The summons must be served on the witness by delivering it to him personally, by leaving it for him with a person at his usual place of abode, by post in a letter addressed to him at his last known or usual place of abode, or, where he is subject to naval discipline, military law or air force law, through his commanding officer: Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(3). As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(1)(b); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(1)(b). It is an offence to fail to answer a witness summons: see the Army Act 1955 s 57(1)(a); the Air Force Act 1955 s 57(1)(a); and para 411 ante. Provision is made for the defrayment of expenses incurred by a person in response to a witness summons: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(4), (5); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(4), (5).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/ (iii) Proceedings before Trial/496. Framing of charges and preparation of charge-sheets.

496. Framing of charges and preparation of charge-sheets.

A trial by court-martial under the Army Act 1955 or the Air Force Act 1955 closely resembles a trial on indictment in the Crown Court in England and Wales, and, as in the Crown Court, once the decision that the accused is to be tried has been taken, the first step to be taken is the framing of the charge or charges on which the accused is to be tried and the arrangement of that charge or those charges in a charge-sheet (which takes the place of an indictment). The charge-sheet must be in a specified form¹, must be signed and dated by the prosecutor², and must state:

- 534 (1) the name, service number and rank of the accused (unless he is a civilian)³;
- 535 (2) the name of the unit, if any, in which the accused is serving (unless he is a civilian)⁴;
- 536 (3) particulars of how the accused is subject to military or air force law or otherwise triable under the relevant legislation⁵;
- 537 (4) any charge preferred against the accused⁶; and
- 538 (5) whether any charge preferred against the accused is to be tried by general court-martial or district court-martial⁷.

1 Courts-Martial (Army) Rules 1997, SI 1997/169, r 8, Sch 1 Pt I para 1(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 8, Sch 1 Pt I para 1(1). The form is that specified in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt II or, as the case may be, the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt II, or a form substantially to the like effect: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 1(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 1(1). As to the making of rules see para 487 ante.

2 Courts-Martial (Army) Rules 1997, SI 1997/169, r 7(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 7(2). For the meaning of 'the prosecutor' see para 488 note 3 ante.

3 Courts-Martial (Army) Rules 1997, SI 1997/169, rr 7(1)(a), 84, Sch 6 Pt I; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 7(1)(a), 84, Sch 6 Pt I. It is sufficient in a charge-sheet to describe a person whose name is not known as a person unknown: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 5; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 5.

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 7(1)(b), Sch 6 Pt I; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 7(1)(b), Sch 6 Pt I.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 7(1)(c); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 7(1)(c).

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 7(1)(d); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 7(1)(d). The charges must be numbered consecutively: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 1(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 1(3). Every charge-sheet must contain, and is sufficient if it contains, a statement of the specific offence with which the accused person is charged describing the offence shortly, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge (Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 2(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 2(1)), provided that where the specific offence with which an accused person is charged in a charge-sheet is one created by or under an enactment, the statement of offence must contain a reference to the specific statutory provision creating the offence, the particulars must disclose the essential elements of the offence (provided that an essential element need not be disclosed if the accused person is not prejudiced or embarrassed in his defence by the failure to disclose it), and it is not necessary to specify or negative an exception, exemption, proviso, excuse or qualification (Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 3; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 3). Where an offence created by or under an

enactment states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment or subordinate instrument may be stated in the alternative in a charge-sheet charging the offence: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 4; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 4.

Where more than one offence is charged in a charge-sheet, the statement and particulars of each offence must be set out in a separate paragraph called a charge, and the provisions described supra apply to each charge in the charge-sheet as they apply to a charge-sheet where one offence is charged: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 1(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 1(2). Charges for any offences may be joined in the same charge-sheet if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character, subject to the proviso that an offence of desertion (ie an offence under the Army Act 1955 s 37(1) (as substituted) or the Air Force Act 1955 s 37(1) (as substituted) (see para 404 ante)), absence without leave (ie an offence under the Army Act 1955 s 38 (as substituted) or the Air Force Act 1955 s 38 (as substituted) (see para 404 ante)), escape from confinement (ie an offence under the Army Act 1955 s 56 or the Air Force Act 1955 s 56 (see para 410 ante)), or, where it arises in connection with a charge of desertion or absence without leave, an offence relating to issues and decorations (ie an offence under the Army Act 1955 s 46(1) or the Air Force Act 1955 s 46(1) (see para 407 ante)), may be included in any charge-sheet: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 6; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 6.

Where the offence charged is one which can be committed in circumstances involving either a higher or a lower degree of punishment, the charge must state the facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted (Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 7; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 7), and where the offence charged is one which may render the accused liable to the punishment of stoppages, it must state any additional facts which it is intended to prove as rendering the accused liable to that punishment if convicted (Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 8; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 8).

A charge-sheet for a specific offence is not open to objection in respect of its form if it is framed in accordance with these provisions: Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 1 Pt I para 2(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 1 Pt I para 2(2).

UPDATE

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/497. Assembly of the court and commencement of trial.

(iv) The Trial

497. Assembly of the court and commencement of trial.

An accused about to be tried by a court-martial is entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another member¹; and, in order to enable him to avail himself of this right, when the full court has assembled the order convening the court-martial² (including the name of any officer or warrant officer specified therein) and the names of the members of the court are read over in his presence and he is asked whether he objects to any of them³. Any objection is then considered by the judge advocate⁴ and his determination announced in open court⁵. Every officer or warrant officer appointed a member of the court, person in attendance under instruction, and interpreter, is then sworn-in in the presence of the accused⁶, and the trial commences immediately after the last court member has been sworn⁷.

Where a pre-trial hearing takes place⁸, these provisions must be complied with at the beginning of that hearing⁹.

1 Army Act 1955 s 92(1) (amended by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 23(1), (2)); Air Force Act 1955 s 92(1) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 39(1), (2)). As to the members of an army or air force court-martial see para 482 ante.

2 As to the convening of a court-martial see para 488 ante.

3 Army Act 1955 s 92(2) (amended by the Armed Forces Act 1996 Sch 1 paras 17, 23(1), (3); and by the Armed Forces Act 2001 s 19, Sch 2 para 3(1), (2)); Air Force Act 1955 s 92(2) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 39(1), (3); and by the Armed Forces Act 2001 Sch 2 para 10(1), (2)); Courts-Martial (Army) Rules 1997, SI 1997/169, r 40(2) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 40(2) (amended by SI 2002/230). As to the making of rules see para 487 ante. Where a court-martial is convened to try two or more accused separately and one accused objects to the president or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only: Courts-Martial (Army) Rules 1997, SI 1997/169, r 40(7); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 40(7).

4 Army Act 1955 s 92(3) (amended by the Armed Forces Act 1996 Sch 1 paras 17, 23(1), (4)); Air Force Act 1955 s 92(3) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 39(1), (4)). As to the appointment and duties of the judge advocate see para 484 ante. If more than one person is objected to, the objection to each is considered in order of seniority, ie judge advocate; president; other members of the court; waiting members; interpreter: Courts-Martial (Army) Rules 1997, SI 1997/169, r 40(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 40(4).

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 40(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 40(5). If an objection to the judge advocate is allowed, the judge advocate must retire and another judge advocate be appointed by or on behalf of the Judge Advocate General: Army Act 1955 s 92(6) (added by the Armed Forces Act 1996 Sch 1 paras 17, 23(1), (7)); Air Force Act 1955 s 92(6) (added by the Armed Forces Act 1996 Sch 1 paras 33, 39(1), (7)). If an objection to the president is allowed, the court must adjourn and the court administration officer must appoint another president: Army Act 1955 s 92(4) (amended by the Armed Forces Act 1996 Sch 1 paras 17, 23(1), (5)); Air Force Act 1955 s 92(4) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 39(1), (5)). As to the appointment of presidents see para 482 ante. As to the court administration officer see para 480 note 5 ante. If an objection to any other officer or warrant officer is allowed, the officer or warrant officer objected to must retire and the vacancy may (and, if otherwise the number of members who are officers or warrant officers would be reduced below the legal minimum, must) be filled in the prescribed manner by another person, who may be either an officer or, where the vacancy could legitimately be filled by a warrant officer, a warrant officer: Army Act 1955 s 92(5) (amended by the Armed Forces Act 1996 Sch 1 paras 17, 23(1), (6); and by the Armed Forces Act 2001 Sch 2 para 3(1), (3)); Air Force Act 1955 s 92(5)

(amended by the Armed Forces Act 1996 Sch 1 paras 33, 39(1), (6); and by the Armed Forces Act 2001 s 19, Sch 2 para 10(1), (3)). As to the legal minimum membership of a court-martial see para 482 ante. If an objection to an officer member other than the president or any warrant officer member is allowed, any waiting member in respect of whom no objection has been made or allowed must take his place: Courts-Martial (Army) Rules 1997, SI 1997/169, r 40(6) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 40(6) (amended by SI 2002/230).

6 Army Act 1955 s 93(1) (amended by the Armed Forces Act 1981 s 11, Sch 2 para 5(1); by the Armed Forces Act 1996 s 35(2), Sch 1 paras 17, 24(1), (2), Sch 7 Pt I; and by the Armed Forces Act 2001 Sch 2 para 4); Air Force Act 1955 s 93(1) (amended by the Armed Forces Act 1981 Sch 2 para 5(1); by the Armed Forces Act 1996 Sch 1 paras 33, 40(1), (2), Sch 7 Pt I; and by the Armed Forces Act 2001 Sch 2 para 11); Courts-Martial (Army) Rules 1997, SI 1997/169, r 41(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 41(2). The oath or affirmation must be administered in the form and manner, at the time and by the person prescribed in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 3 or, as the case may be, the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 3: Army Act 1955 s 93(3); Air Force Act 1955 s 93(3); Courts-Martial (Army) Rules 1997, SI 1997/169, r 24; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 24. The judge advocate, or any other member of the court on his behalf, must administer an oath or affirmation to the president, each officer member of the court, any warrant officer member of the court, any person in attendance for instruction, any interpreter, and any witness: Courts-Martial (Army) Rules 1997, SI 1997/169, r 41(3) (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 41(3) (amended by SI 2002/230).

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 42(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 42(1).

8 As to pre-trial hearings see para 494 ante.

9 Courts-Martial (Army) Rules 1997, SI 1997/169, rr 38(1), 40(1), 41(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 38(1), 40(1), 41(1). In a pre-trial hearing, however, the accused may not state his objection to any member of the court other than the judge advocate, and the judge advocate may not administer an oath or affirmation to any officer or warrant officer member until after the full court has convened, and the rules as to objection and swearing-in are modified accordingly: Courts-Martial (Army) Rules 1997, SI 1997/169, r 38 (amended by SI 2002/230); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 38 (amended by SI 2002/230).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/498. Requirement to sit in open court.

498. Requirement to sit in open court.

A court-martial must sit in open court and in the presence of the accused¹, unless it considers it necessary or expedient in the interests of the administration of justice to sit in private², or unless it considers that any evidence or statement to be made in the proceedings might lead to the disclosure of information which would or might be useful to an enemy, in which case it may exclude the public from all or any part of the proceedings³. The court may also be cleared in certain cases where a child or young person is giving evidence⁴. The members of the court may also deliberate among themselves in closed court⁵, and they must sit in closed court while deliberating on their finding or sentence on any charge⁶. Any ruling or direction of the judge advocate on a question of law (including a question of procedure or practice) must be given in open court⁷, although the judge advocate may determine, and give rulings on, questions of law (including questions of procedure and practice) in the absence of the other members of the court and of any officers and other persons under instruction⁸.

1 Army Act 1955 s 94(1); Air Force Act 1955 s 94(1). This obligation to sit in open court entails that an opportunity must be given to members of the public, including representatives of the press, to be present. Regulations require a notice to be posted, at a place accessible to the public, of forthcoming trials by court-martial, identifying the accused and stating the date, time and place of the trial: see the Queen's Regulations for the Army 1975 para 6.101; and the Queen's Regulations for the Royal Air Force (5th Edn, 1999) Ch 16 para 1157.

2 Army Act 1955 s 94(2); Air Force Act 1955 s 94(2). For instance, where the court is satisfied that, because of the nature of the evidence which a witness is to give, that evidence could not be given in public and its absence might obstruct the administration of justice the court may sit in private: see *Scott v Scott* [1913] AC 417, HL; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1300.

3 Army Act 1955 s 94(2); Air Force Act 1955 s 94(2).

4 See the Children and Young Persons Act 1933 s 37; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 1281.

5 Army Act 1955 s 94(4); Air Force Act 1955 s 94(4). Where a court-martial sits in closed court no one except the members of the court and any person under instruction may be present: Army Act 1955 s 94(5); Air Force Act 1955 s 94(5); Courts-Martial (Army) Rules 1997, SI 1997/169, r 36; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 36.

6 Army Act 1955 s 94(3); Air Force Act 1955 s 94(3). The judge advocate may not be present while the other members of the court are deliberating on their finding on any charge: Army Act 1955 s 94(6) (s 94(6)-(8) added by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 25); Air Force Act 1955 s 94(6) (s 94(6)-(8) added by the Armed Forces Act 1996 s 5, Sch 1 paras 33, 41).

7 Army Act 1955 s 94(7); Air Force Act 1955 s 94(7) (both as added: see note 6 supra).

8 Army Act 1955 s 94(8); Air Force Act 1955 s 94(8) (both as added: see note 6 supra).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by

Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/499. Order of trials.

499. Order of trials.

Where a court-martial has been convened to try two or more accused separately, it must try them in the order indicated by the convening order subject to the judge advocate's discretion to direct otherwise¹.

¹ The order in which cases are taken is a matter of procedure and accordingly for the judge advocate: see the Army Act 1955 s 84B(3), (4); the Air Force Act 1955 s 84B(3), (4) (both as added); and para 484 ante.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/500. Arraignment, pleas and fitness to plead.

500. Arraignment, pleas and fitness to plead.

Pre-arraignment matters are dealt with immediately following the commencement of the trial¹. Abuse of process applications are heard at this stage, as are challenges to the court's jurisdiction², objections to the charge, or pleas in bar of trial³. Where two or more accused are charged jointly, the judge advocate may order that they be tried separately on the ground that one or other would be prejudiced in his defence if this were not done⁴; similarly, where a charge-sheet contains more than one charge the judge advocate may order, on similar grounds, that the accused be tried separately on any charge in that charge-sheet⁵. All of these pleas and applications may be and almost always will be heard and determined by the judge advocate alone in the absence of the court⁶. After such pleas and objections have been dealt with, the accused is required to plead guilty or not guilty to each charge in the charge-sheet on which he is arraigned, and there is provision for subsequent changes of pleas⁷. Before accepting a guilty plea the judge advocate may, where necessary, satisfy himself that the accused understands the nature of the charge, the general effect of the plea, and the difference in procedure following guilty and not guilty pleas⁸. Where a plea is not accepted by the court or the accused refuses to plead or does not plead intelligibly, a plea of not guilty must be entered⁹.

Either on arraignment or subsequently during the trial, the question may arise whether the accused is fit to stand his trial¹⁰. The consideration of this question may be postponed until any time up to the opening of the defence if, having regard to the nature of the supposed disability, the court is of opinion that it is expedient to do so and in the interests of the accused, but otherwise the question must be decided as soon as it arises¹¹. If the court finds that the accused is unfit to stand his trial, the trial must not proceed or proceed further¹². There is a right of appeal to the Courts-Martial Appeal Court¹³.

1 As to the commencement of the trial see para 497 ante.

2 The challenge may be based, for example, on the ground that the accused was not subject to military or air force law when the alleged offence was committed: see *R v Governor of Wormwood Scrubs Prison, ex p Boydell* [1948] 2 KB 193, [1948] 1 All ER 438, DC.

3 A ground for such an application may arise under the Army Act 1955 s 132 (as amended) or and the Air Force Act 1955 s 132 (as amended), which provide a limitation period for the trial of civil offences (see para 304 ante), or under the Army Act 1955 s 134 (as amended) or the Air Force Act 1955 s 134 (as amended), which provide that a person may not be tried for an offence already dealt with summarily (see para 486 ante).

4 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 44(1); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 44(1). The principles which the judge advocate must apply in making this decision are analogous to those applicable on an indictment in the Crown Court, as to which see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1222.

5 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 44(1); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 44(1). The principles which the judge advocate must apply in making this decision are analogous to those applicable on an indictment in the Crown Court, as to which see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1222.

6 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 43(1); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 43(1).

7 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 45; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 45 (arraignment). See also the Courts-Martial (Army) Rules 1997, SI 1997/169, r 54; and

the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 54 (change of plea with leave of judge advocate). A court will not accept a guilty plea if the judge advocate, having regard to all the circumstances, considers that it should not: Courts-Martial (Army) Rules 1997, SI 1997/169, r 46(2)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 46(2)(a). Provision is also made in connection with the submission of guilty pleas to one or more alternative charges: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 47; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 47. These are known as special pleas, and none of them may be accepted unless they are acceptable to the prosecution.

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 46(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 46(1). These safeguards are designed partly for the protection of the accused, and partly to avoid the inconvenience which arises where an accused, having pleaded guilty to a charge, subsequently wishes to put forward in mitigation of punishment an argument which is inconsistent with his guilt.

9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 46(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 46(3).

10 A person is unfit to plead and stand his trial if he is under any disability such as, apart from the Criminal Procedure (Insanity) Act 1964, would constitute a bar to a trial on indictment in England or Wales: Army Act 1955 s 116(1); Air Force Act 1955 s 116(1) (both amended by the Criminal Procedure (Insanity) Act 1964 s 7, Sch 2 Pt I). As to what constitutes such a bar see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1265.

As from a day to be appointed, the Army Act 1955 s 116 (as amended) is substituted, and ss 115A, 115B, 116A-116E are added, and the Air Force Act 1955 s 116 (as amended) is substituted, and ss 115A, 115B, 116A-116E are added, by the Armed Forces Act 1996 s 8, Sch 2 para 1. The definition of 'unfitness to stand trial' for these purposes is contained in the Army Act 1955 s 115A(2) and the Air Force Act 1955 s 115A(2) (both as so prospectively added). At the date at which this volume states the law no such day had been appointed.

The question of fitness may arise at the instance of the defence (where the accused is represented) or otherwise, and the burden of proving that he is unfit to stand trial falls upon the party who alleges this: see *R v Podola* [1960] 1 QB 325, [1959] 3 All ER 418, CCA. See also the Army Act 1955 s 115A(1) and the Air Force Act 1955 s 115A(1) (both as so prospectively added).

11 See the Army Act 1955 s 116(4A)(a), (b); and the Air Force Act 1955 s 116(4A)(a), (b) (Army Act 1955 s 116(4A) and the Air Force Act 1955 s 116(4A) added by the Criminal Procedure (Insanity) Act 1964 Sch 2 Pt I; and prospectively substituted (see note 10 supra)).

As from a day to be appointed, it is provided that where the question of fitness to stand trial falls to be determined on the commencement of the trial and the trial proceeds, the accused must be tried by a court-martial other than that which determined that question; that where the question falls to be determined at any later time, it must be determined by a court-martial other than that by which the accused is being tried; and that a court may not make any such determination except on the written or oral evidence of two or more medical practitioners at least one of whom is duly approved: Army Act 1955 s 115A(6), (7); Air Force Act 1955 s 115A(6), (7) (both prospectively added: see note 10 supra). At the date at which this volume states the law no such day had been appointed. For these purposes, 'duly approved' means approved for the purposes of the Mental Health Act 1983 s 12 (as amended), or the Mental Health Scotland Act 1984 s 29 or s 30, as having special experience in the diagnosis and treatment of mental disorder (within the meaning of the relevant Act), or appointed for the purposes of the Mental Health (Northern Ireland) Order 1986, SI 1986/595 (NI 4) Pt II by the Mental Health Commission for Northern Ireland: Army Act 1955 s 116E(1); Air Force Act 1955 s 116E(1) (both prospectively added: see note 10 supra). As to the Mental Health Act 1983 s 12 (as amended) see MENTAL HEALTH vol 30(2) (Reissue) paras 482-484. Provision is also made in connection with the receipt in evidence of reports of registered medical or mental health practitioners: see the Army Act 1955 s 116E(2), (3); and the Air Force Act 1955 s 116E(2), (3) (both as so prospectively added).

Where, under these provisions, consideration of the issue of unfitness to plead is postponed and the trial proceeds, the court may find the accused not guilty on the charge or charges against him (eg on a submission that he has no case to answer) and in that event the issue of unfitness to plead will not be decided: see the Army Act 1955 s 116(4A)(a); and the Air Force Act 1955 s 116(4A)(a) (both as so added). As from a day to be appointed, see also the Army Act 1955 s 115A(4); and the Air Force Act 1955 s 115A(4) (both as so prospectively added).

12 Army Act 1955 s 116(4A)(c); Air Force Act 1955 s 116(4A)(c) (both as added (see note 11 supra); prospectively added (see note 10 supra)). In the case of any such finding Her Majesty may give orders for the safe custody of the accused during Her pleasure in such place and in such manner as Her Majesty thinks fit: see the Army Act 1955 s 116(3); and the Air Force Act 1955 s 116(3) (both prospectively substituted: see note 10 supra). These provisions enable the Home Secretary to direct that the accused be removed to and detained in a specified hospital: see the Mental Health Act 1983 s 46 (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 499.

As from a day to be appointed, it is provided that where it is determined (in accordance with the Army Act 1955 s 115A(6) or the Air Force Act 1955 s 115A(6) (both prospectively added) (see note 10 supra)) that an accused is unfit to stand trial, the trial may not proceed or further proceed but the court must determine whether it is satisfied, as respects the charge or each of the charges on which the accused was to be or was being tried, that the accused did the act or made the omission charged against him as the offence: Army Act 1955 s 115B(1), (2); Air Force Act 1955 s 115B(1), (2) (both prospectively added: see note 10 supra). Where the question of fitness to stand was determined on the commencement of the trial, the determination of culpability must be made by a court-martial other than that which determined the question of fitness; where the fitness question was determined at any later time, the determination of culpability must be made by the court-martial by whom the accused was being tried (Army Act 1955 s 115B(5); Air Force Act 1955 s 115B(5) (both as so prospectively added)); in either case the determination of culpability must be made on the evidence (if any) already given in the trial and on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under the Army Act 1955 s 115B or the Air Force Act 1955 s 115B (both prospectively added) to put the case for the defence (Army Act 1955 s 115B(2)(a), (b); Air Force Act 1955 s 115B(2)(a), (b) (both as so prospectively added)). If as respects that charge or any of those charges the court is then satisfied that the accused did the act or made the omission charged against him, it must make such a finding (Army Act 1955 s 115B(3); Air Force Act 1955 s 115B(3) (both as so prospectively added)); if the court is not so satisfied, it must find the accused not guilty as if on the charge in question the trial had proceeded to a conclusion (Army Act 1955 s 115B(4); Air Force Act 1955 s 115B(4) (both as so prospectively added)). At the date at which this volume states the law no such day had been appointed. It is further provided that where an accused is found both to be unfit to stand trial and to have done the act or made the omission charged against him, the court must make in respect of him an admission order, a guardianship order, a supervision and treatment order, or an order discharging him absolutely, as the court thinks most suitable in all the circumstances of the case: see the Army Act 1955 s 116A(1)(a), (2); and the Air Force Act 1955 s 116A(1)(a), (2) (both as so prospectively added). Further provision is made as to the circumstances in which these orders may be made (see the Army Act 1955 s 116A(3)-(5); and the Air Force Act 1955 s 116A(3)-(5) (both as so prospectively added)) and the procedural requirements for the making of them. As to admission orders see the Army Act 1955 s 116B; and the Air Force Act 1955 s 116B (both as so prospectively added). As to guardianship orders see the Army Act 1955 s 116C; and the Air Force Act 1955 s 116C (both as so prospectively added). As to supervision and treatment orders see the Army Act 1955 s 116D; and the Air Force Act 1955 s 116D (as so prospectively added).

13 See the Courts-Martial (Appeals) Act 1968 ss 24, 25 (both as amended; s 24 prospectively further amended, s 25 prospectively substituted, by the Armed Forces Act 1996 Sch 2 paras 10, 11).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

500 Arraignment, pleas and fitness to plead

NOTES 10-12--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 Sch 11.

See Armed Forces (Unfitness to Stand Trial and Insanity) Regulations 2009, SI 2009/1213.

NOTE 12--Army Act 1955 s 116B; Air Force Act 1955 s 116B amended: Mental Health Act 2007 s 15(1), (2).

NOTE 13--1986 Act s 24 amended, s 25 substituted: 2004 Act Sch 3 paras 11-13.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/501. Procedure after acceptance of a plea of guilty.

501. Procedure after acceptance of a plea of guilty.

The procedure following the acceptance and recording by a court-martial of a plea or pleas of guilty to one or more charges in a charge-sheet on which an accused has been arraigned depends on whether or not there is any other charge in that charge-sheet to which that accused, or any other, has pleaded not guilty. If there are any charges to which pleas of not guilty have been made, the court must deal with every such charge, unless the judge advocate directs otherwise, and announce and record its finding on it, before dealing with the charge or charges to which the plea or pleas of guilty relate¹.

The procedure for dealing with pleas of guilty accepted and recorded is as follows. The prosecutor must address the court on the facts of the case². Where there is a dispute of fact that issue may be tried and witnesses must, if directed by the judge advocate, or may, with the judge advocate's leave, be called³. Although the rules make no provision for this, the judge advocate should usually allow the prosecution and defence to address the court on any facts in mitigation to be given appropriate weight in sentencing⁴. Offences to be taken into consideration will usually also be dealt with at this stage⁵.

¹ See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 52; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 52.

² See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 52(5); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 52(5).

³ See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 53(1), (2); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 53(1), (2).

⁴ See *R v Newton* (1982) 77 Cr App Rep 13, [1983] Crim LR 198, CA; *R v Guppy* (1994) 16 Cr App Rep (S) 25, CA.

⁵ See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 74; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 74.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/502. Procedure on a plea of not guilty: the rules of evidence.

502. Procedure on a plea of not guilty: the rules of evidence.

The procedure at trial is closely similar to that which is followed in the Crown Court in England. A submission may be made on behalf of the accused, at the close of the case for the prosecution, that no prima facie case for him to answer has been made out¹. If the judge advocate allows any such submission, he must direct the court to find the accused not guilty of the charge to which the submission relates²; if he does not allow it, the court proceeds with the trial³. The court also has power, equivalent to a jury's, of its own motion to acquit an accused at any stage after the close of the prosecution case⁴.

Before the defence is opened, the judge advocate is required to explain to the accused what alternatives are open to him⁵, and to ascertain what the accused intends to do. The judge advocate may question any witness, on his own behalf or on behalf of other members of the court⁶, and may allow witnesses to be recalled or new witnesses to be called⁷. Ordinarily the accused, if he so elects, gives his evidence before the other defence witnesses⁸. The prosecution and the accused are then entitled to make closing addresses to the court⁹. The judge advocate sums up the law and summarises the evidence¹⁰ before withdrawing, whereupon the court closes to deliberate on its findings¹¹. The vote of each member on the finding on each charge is given orally in reverse order of seniority¹². As an alternative to finding an accused guilty of the offence charged, the court-martial may find him guilty of attempting to commit the offence¹³ or of a lesser offence¹⁴.

In general, the English law of evidence, including that relating to the giving of evidence by television link¹⁵, is applicable, subject to necessary modifications, at a court-martial¹⁶.

1 Courts-Martial (Army) Rules 1997, SI 1997/169, r 63(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 63(1). Where such a submission is made the judge advocate must order the other members of the court to withdraw and hear the submission alone: Courts-Martial (Army) Rules 1997, SI 1997/169, r 43(1)(a); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 43(1)(a).

2 Courts-Martial (Army) Rules 1997, SI 1997/169, r 63(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 63(2).

3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 63(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 63(3).

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 64; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 64.

5 See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 65(1); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 65(1). These require the judge advocate to satisfy himself that the accused understands that he may give evidence in his defence if he so wishes but is not obliged to do so; the consequences of choosing to remain silent at trial; that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecution and questioned by the judge advocate; and that he may call witnesses on his behalf. If the accused intends to call any witness of fact other than himself, his representative, or if he is unrepresented, the accused himself may make an opening address: Courts-Martial (Army) Rules 1997, SI 1997/169, r 65(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 65(2).

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 62(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 62(2).

7 Courts-Martial (Army) Rules 1997, SI 1997/169, rr 62(4), 67; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 62(4), 67.

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 66; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 66.

9 Courts-Martial (Army) Rules 1997, SI 1997/169, r 68(1), (3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 68(1), (3). The prosecution may not make a closing address where the accused is not represented by a legal adviser and has called in person no witnesses as to fact other than himself (Courts-Martial (Army) Rules 1997, SI 1997/169, r 68(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 68(4)); in any event the accused is entitled to make his address after the prosecution (Courts-Martial (Army) Rules 1997, SI 1997/169, r 68(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 68(2)).

10 Courts-Martial (Army) Rules 1997, SI 1997/169, r 69; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 69. The judge advocate's directions on law bind the court: see the Army Act 1955 s 84B(3), (4); the Air Force Act 1955 s 84B(3), (4) (both as added); and para 484 ante.

11 Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(1). As to deliberations on findings see para 507 post. During its deliberation on a finding, the court may not separate until the finding has been reached unless the judge advocate directs that in the interests of justice the court may separate: Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(3). If the court requires further direction on the law during its deliberation on a finding on any charge, it must suspend its deliberation to seek and be given further direction by the judge advocate in open court: Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(2). Where the interests of justice require it, the judge advocate may in open court question the court on any finding of fact reached during its deliberation on the finding on any charge: Courts-Martial (Army) Rules 1997, SI 1997/169, r 73; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 73.

12 Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(4).

13 See the Army Act 1955 s 98; the Air Force Act 1955 s 98; and paras 420, 422 ante.

14 See the Army Act 1955 s 98(6), Sch 3 (as amended); the Air Force Act 1955 s 98(6), Sch 3 (as amended); and paras 393, 400 et seq ante.

15 In the Criminal Justice Act 1988 s 32 (as amended), s 32A (as added and amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414.

16 See the Army Act 1955 s 99 (as amended), s 99A (as added and amended); the Air Force Act 1955 s 99 (as amended), s 99A (as added and amended); the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996, SI 1996/2592; the Courts-Martial (Army) Rules 1997, SI 1997/169, rr 60, 61; the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 60, 61; and para 375 ante. As to the law of evidence see CIVIL PROCEDURE; CRIMINAL LAW, EVIDENCE AND PROCEDURE.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

502 Procedure on a plea of not guilty: the rules of evidence

NOTE 16--SI 1996/2592 revoked: SI 2009/994.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/503. Summoning of witnesses.

503. Summoning of witnesses.

The court administration officer¹ may summon on behalf of the accused any person whom the accused reasonably requires to give evidence at court-martial, and must notify the accused of this as soon as is practicable after the accused has been notified that he is to be tried by court-martial²; however, the court administration officer may decide not to summon any witness so requested where in his opinion it is not reasonable so to do, in which event he must inform the accused, the Judge Advocate General³ (or his deputy) and the prosecutor⁴ in writing of his decision and the reason for it⁵.

The court administration officer may issue a witness summons⁶ in respect of any person required to give evidence at a court-martial⁷.

1 As to the court administration officer see para 480 note 5 ante.

2 Courts-Martial (Army) Rules 1997, SI 1997/169, r 22(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 22(1). As to the making of rules see para 487 ante. As to the notification of the accused that he is to be tried by court-martial see para 489 ante. If the accused requests the court administration officer to summon a witness, the accused must provide sufficient information in sufficient time to enable a summons to be served: Courts-Martial (Army) Rules 1997, SI 1997/169, r 22(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 22(2).

3 As to the appointment and duties of the Judge Advocate General see paras 446-447 ante.

4 For the meaning of 'the prosecutor' see para 488 note 3 ante.

5 Courts-Martial (Army) Rules 1997, SI 1997/169, r 22(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 22(3).

6 A witness summons (which includes a summons to a bank manager for the purposes of the Bankers' Books Evidence Act 1879) must be issued in the form set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2 Form 1 (witnesses) or Form 2 (bank managers) or (as the case may be) the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2 Form 1 (witnesses) or Form 2 (bank managers): Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(1). The summons must be served on the witness by delivering it to him personally, by leaving it for him with a person at his usual place of abode, by post in a letter addressed to him at his last known or usual place of abode, or, where he is subject to naval discipline, military law or air force law, through his commanding officer: Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(3). As to the categories of persons subject to naval discipline, military law or air force law see para 306 et seq ante.

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(1)(c); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(1)(c). It is an offence to fail to answer a witness summons: see the Army Act 1955 s 57(1)(a); the Air Force Act 1955 s 57(1)(a); and para 411 ante. Provision is made for the defrayment of expenses incurred by a person in response to a witness summons: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 23(4), (5); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 23(4), (5).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by

Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/504. Power to compel attendance of civilian witnesses.

504. Power to compel attendance of civilian witnesses.

As from a day to be appointed¹, provision is made for the arrest of persons not subject to military or air force law² in order to compel their attendance as witnesses at courts-martial³. There are two circumstances where a warrant of arrest may be issued: (1) where it is perceived that such a person will not voluntarily attend to give his evidence⁴; and (2) where such a person has failed to attend in response to a witness summons⁵.

At any time before the commencement of a trial the judicial officer⁶ may issue a warrant for the arrest⁷ of any person not subject to military or air force law in respect of whom the officer is satisfied on oath:

- 539 (a) that he is in the United Kingdom⁸ or any colony⁹;
- 540 (b) that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence at a trial by court-martial¹⁰ in the United Kingdom or (as the case may be) in that colony¹¹;
- 541 (c) that he will not voluntarily attend as a witness or produce the document or other thing¹²; and
- 542 (d) that it is probable that a summons requiring him to attend the court to give evidence or to produce the document or other thing would not procure his attendance¹³.

At any time after the commencement of the trial, these powers are exercisable by the judge advocate¹⁴.

A warrant for the arrest of a person not subject to military or air force law¹⁵ may also be issued if he fails to attend a court-martial held in the United Kingdom or any colony in response to a summons requiring him to attend¹⁶, provided that:

- 543 (i) the judge advocate¹⁷ is satisfied by evidence on oath that the person is in the United Kingdom or (as the case may be) the colony and that he is likely to be able to give material evidence or produce any document or other thing likely to be material evidence in the proceedings¹⁸;
- 544 (ii) it is proved on oath or in such manner as may be prescribed¹⁹ that the person has been duly served with the summons and that any expenses to which he is entitled²⁰ have been paid or tendered²¹; and
- 545 (iii) it appears to the judge advocate that there is no just excuse for the failure²².

1 The Army Act 1955 s 101A and the Air Force Act 1955 s 101A are added by the Armed Forces Act 2001 s 25(1), (2), as from a day to be appointed under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 Army Act 1955 s 101A(1)(a), (3)(a); Air Force Act 1955 s 101A(1)(a), (3)(a) (both prospectively added: see note 1 supra). As to the categories of persons subject to military or air force law see para 307 et seq ante.

3 These provisions also apply, with modifications as noted, to proceedings before a judicial officer and in relation to the summary appeal court: see the Army Act 1955 s 101A(5), (6) and the Air Force Act 1955 s 101A(5), (6) (both prospectively added: see note 1 supra). See the text and notes infra. As to the summary appeal court see para 359 et seq ante.

4 See the Army Act 1955 s 101A(1), (2) and the Air Force Act 1955 s 101A(1), (2) (both prospectively added: see note 1 supra). See the text and notes 7-14 infra.

5 See the Army Act 1955 s 101A(3) and the Air Force Act 1955 s 101A(3) (both prospectively added: see note 1 supra). See the text and notes 15-22 infra.

6 Army Act 1955 s 101A(2); Air Force Act 1955 s 101A(2) (both prospectively added: see note 1 supra). As to the issue of witness summonses see para 503 ante. 'Judicial officer' means a person appointed under the Army Act 1955 s 75L (as added and amended) or the Air Force Act 1955 s 75L (as added and amended), as the case may be: Army Act 1955 s 225(1) (definition added by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 5(1)(b)); Air Force Act 1955 s 223(1) (definition added by the Armed Forces Discipline Act 2000 Sch 1 para 5(2)(b)).

In the application of these provisions in relation to the summary appeal court (see note 3 supra), the person empowered to issue the warrant for arrest before the commencement of the hearing is a judge advocate appointed under the Army Act 1955 s 83ZB (as added) or the Air Force Act 1955 s 83ZB (as added), as the case may be (see para 365 ante): see the Army Act 1955 s 101A(2), (6)(c)(i); and the Air Force Act 1955 s 101A(2), (6)(c)(i) (both as so prospectively added). In the application of these provisions to proceedings before a judicial officer (see note 3 supra), the person empowered to issue the warrant for arrest, whatever the stage in the proceedings, is the judicial officer: see the Army Act 1955 s 101A(2), (5)(c); and the Air Force Act 1955 s 101A(2), (5)(c) (both as so prospectively added).

7 The warrant must be addressed to a constable, and must require the person in question to be brought before the court-martial at a time and place specified in the warrant: Army Act 1955 s 101A(1), (4); Air Force Act 1955 s 101A(1), (4) (both prospectively added: see note 1 supra).

8 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

9 Army Act 1955 s 101A(1)(a); Air Force Act 1955 s 101A(1)(a) (both prospectively added: see note 1 supra). As to the meaning of 'colony' see para 20 note 4 ante.

10 In the application of these provisions to proceedings before a judicial officer and in relation to the summary appeal court (see note 3 supra), any reference to a court-martial is to be construed as a reference to the proceedings, the judicial officer, or the summary appeal court, as the case may be, and the reference to a trial by court-martial is to be construed as a reference to proceedings before the judicial officer or the hearing of an appeal before the summary appeal court, as the case may be: see the Army Act 1955 s 101A(1)(a), (5)(a), (b), (6)(a), (b); and the Air Force Act 1955 s 101A(1)(a), (5)(a), (b), (6)(a), (b) (both prospectively added: see note 1 supra).

11 Army Act 1955 s 101A(1)(a); Air Force Act 1955 s 101A(1)(a) (both prospectively added: see note 1 supra).

12 Army Act 1955 s 101A(1)(b); Air Force Act 1955 s 101A(1)(b) (both prospectively added: see note 1 supra).

13 Army Act 1955 s 101A(1)(c); Air Force Act 1955 s 101A(1)(c) (both prospectively added: see note 1 supra).

14 Army Act 1955 s 101A(2); Air Force Act 1955 s 101A(2) (both prospectively added: see note 1 supra). For the meaning of 'the judge advocate' see para 482 note 2 ante (definition applied by the Army Act 1955 s 225(1) (definition added by the Armed Forces Act 1996 s 5, Sch 1 paras 66, 74(c)); and the Air Force Act 1955 s 223(1) (definition added by the Armed Forces Act 1996 Sch 1 paras 76, 84(c))).

In the application of these provisions in relation to the summary appeal court (see note 3 supra), the person empowered to issue the warrant for arrest after the commencement of the hearing is the court: see the Army Act 1955 s 101A(2), (6)(c)(ii); and the Air Force Act 1955 s 101A(2), (6)(c)(ii) (both as so prospectively added). In the application of these provisions to proceedings before a judicial officer (see note 3 supra), the person empowered to issue the warrant for arrest, whatever the stage in the proceedings, is the judicial officer: see the Army Act 1955 s 101A(2), (5)(c); and the Air Force Act 1955 s 101A(2), (5)(c) (both as so prospectively added).

15 The warrant must be addressed to a constable, and must require the person in question to be brought before the court-martial at a time and place specified in the warrant: Army Act 1955 s 101A(3), (4); Air Force Act 1955 s 101A(3), (4) (both prospectively added: see note 1 supra).

16 Army Act 1955 s 101A(3)(a); Air Force Act 1955 s 101A(3)(a) (both prospectively added: see note 1 supra).

17 In the application of these provisions to proceedings before a judicial officer and in relation to the summary appeal court (see note 3 supra), references to the judge advocate in the context of the power to

arrest a person who has failed to attend in response to a witness summons are to be construed as references to the judicial officer or the summary appeal court, as the case may be: see the Army Act 1955 s 101A(3), (5)(e), (6)(e); and the Air Force Act 1955 s 101A(3), (5)(e), (6)(e) (both prospectively added: see note 1 supra).

18 Army Act 1955 s 101A(3)(b); Air Force Act 1955 s 101A(3)(b) (both prospectively added: see note 1 supra).

19 le prescribed by rules under the Army Act 1955 s 103 (as substituted and amended) or the Air Force Act 1955 s 103 (as substituted and amended), as the case may be: see the Army Act 1955 s 101A(3)(c); and the Air Force Act 1955 s 101A(3)(c) (both prospectively added: see note 1 supra). The rules made under these provisions are the Courts-Martial (Army) Rules 1997, SI 1997/169 (as amended) and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171 (as amended), but at the date at which this volume states the law no amendment had been made to those rules prescribing any manner of proving service for these purposes.

In the application of these provisions to proceedings before a judicial officer (see note 3 supra), the rules which may prescribe the manner of proving service are those made under the Army Act 1955 s 75M (as added and amended) or the Air Force Act 1955 s 75M (as added and amended) (see para 347 ante), as the case may be: see the Army Act 1955 s 101A(3)(c), (5)(d); and the Air Force Act 1955 s 101A(3)(c), (5)(d) (both as so prospectively added). The rules made under these provisions are the Army Custody Rules 2000, SI 2000/2368, and the Air Force Custody Rules 2000, SI 2000/2369, but at the date at which this volume states the law no amendment had been made to those rules prescribing any manner of proving service for these purposes. In the application of these provisions to proceedings before the summary appeal court (see note 3 supra), the rules which may prescribe the manner of proving service are those made under the Army Act 1955 s 83ZJ (as added) or the Air Force Act 1955 s 83ZJ (as added) (see para 365 ante), as the case may be: see the Army Act 1955 s 101A(3)(c), (6)(d); and the Air Force Act 1955 s 101A(3)(c), (6)(d) (both as so prospectively added). The rules made under these provisions are the Summary Appeal Court (Army) Rules 2000, SI 2000/2371, and the Summary Appeal Court (Air Force) Rules 2000, SI 2000/2372, but at the date at which this volume states the law no amendment had been made to those rules prescribing any manner of proving service for these purposes.

20 le by virtue of regulations made by the Defence Council: see the Army Act 1955 s 101A(3)(c); and the Air Force Act 1955 s 101A(3)(c) (both prospectively added: see note 1 supra). As to the Defence Council see para 2 ante. Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work.

21 Army Act 1955 s 101A(3)(c); Air Force Act 1955 s 101A(3)(c) (both prospectively added: see note 1 supra). The reference in the text to payment or tendering of expenses is a reference to such payment or tendering within the meaning of rules made under the Army Act 1955 s 103 (as substituted and amended) or the Air Force Act 1955 s 103 (as substituted and amended), as the case may be: see the Army Act 1955 s 101A(3)(c); and the Air Force Act 1955 s 101A(3)(c) (both as so prospectively added). See also the Forms of Summons to Witnesses set out in the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 2; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 2.

22 Army Act 1955 s 101A(3)(d); Air Force Act 1955 s 101A(3)(d) (both prospectively added: see note 1 supra).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/505. Other powers in relation to civilians.

505. Other powers in relation to civilians.

The president of a court-martial¹ is empowered to certify to a court of law a number of offences amounting to contempt of courts-martial committed by persons not subject to military or air force law². This power may be exercised where such a person:

- 546 (1) fails to comply with a summons to attend as a witness³;
- 547 (2) refuses to swear an oath when duly required to do so⁴;
- 548 (3) refuses to produce any document or other thing which is in his custody or under his control and which he has been lawfully required to produce⁵;
- 549 (4) when a witness, refuses to answer any question which he has been lawfully required to answer⁶;
- 550 (5) wilfully insults a member of the court-martial while acting as such, a witness or any other person whose duty it is to attend on or before the court while so attending, or any such person while that person is going to or returning from court proceedings⁷;
- 551 (6) wilfully interrupts court-martial proceedings or otherwise misbehaves before the court⁸; or
- 552 (7) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court⁹.

If any of these offences is committed, the president may certify it¹⁰ under his hand to an appropriate court of law¹¹ in the part of the United Kingdom¹² where the offence is alleged to have been committed¹³.

1 As to the president of a court-martial see para 482 ante.

2 See the Army Act 1955 s 101(1) (as renumbered and amended); the Air Force Act 1955 s 101(1) (as renumbered and amended); and the text and notes 3-13 infra. As to the categories of persons subject to military or air force law see para 307 et seq ante.

3 Army Act 1955 s 101(1)(a) (s 101(1) renumbered by the Armed Forces Discipline Act 2000 s 10, Sch 1 para 3); Air Force Act 1955 s 101(1)(a) (s 101(1) renumbered by the Armed Forces Discipline Act 2000 Sch 1 para 3).

4 Army Act 1955 s 101(1)(b); Air Force Act 1955 s 101(1)(b) (both as renumbered: see note 3 supra).

5 Army Act 1955 s 101(1)(c) (as renumbered (see note 3 supra); and amended by the Armed Forces Act 2001 s 24(1), (2)(b)); Air Force Act 1955 s 101(1)(c) (as renumbered (see note 3 supra); and amended by the Armed Forces Act 2001 s 24(1), (2)(d)).

6 Army Act 1955 s 101(1)(d); Air Force Act 1955 s 101(1)(d) (both as renumbered: see note 3 supra).

7 Army Act 1955 s 101(1)(e) (as renumbered: see note 3 supra); Air Force Act 1955 s 101(1)(e) (as renumbered (see note 3 supra); and amended by the Army and Air Force Act 1961 s 38(1), Sch 2).

8 Army Act 1955 s 101(1)(f); Air Force Act 1955 s 101(1)(f) (both as renumbered: see note 3 supra).

9 Army Act 1955 s 101(1)(g); Air Force Act 1955 s 101(1)(g) (both as renumbered: see note 3 supra).

10 Where the offence is alleged to have been committed in the United Kingdom and the court-martial was held outside the United Kingdom, the offence may be certified by the Defence Council or any officer authorised by it: Army Act 1955 s 101(1) proviso (as renumbered (see note 3 supra); and amended by the Defence

(Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I); Air Force Act 1955 s 101(1) proviso (as renumbered (see note 3 supra); and amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante. As to the Defence Council see para 2 ante.

11 Is a court having power to commit for contempt: Army Act 1955 s 101(1); Air Force Act 1955 s 101(1) (both as renumbered: see note 3 supra).

12 If the offence is alleged to have been committed in a colony it may be certified to an appropriate court of law in that colony: Army Act 1955 s 101(1); Air Force Act 1955 s 101(1) (both as renumbered: see note 3 supra). As to the meaning of 'colony' see para 20 note 4 ante.

13 Army Act 1955 s 101(1); Air Force Act 1955 s 101(1) (both as renumbered: see note 3 supra). The court of law to which the alleged offence is certified may inquire into it and after hearing any witnesses who may be produced against or on behalf of the person charged, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified: Army Act 1955 s 101(1); Air Force Act 1955 s 101(1) (both as so renumbered).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/506. Finding as to insanity of accused.

506. Finding as to insanity of accused.

If, on a trial by court-martial, it appears to the court that the evidence (apart from any question of insanity) supports a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting the offence he was insane¹, the court must find him not guilty of that offence by reason of insanity². Following such a finding, the accused must be kept in custody in such manner as may be provided by or under regulations of the Defence Council until the directions of Her Majesty as to the safe custody of the accused during Her pleasure are known³. There is a right to appeal to the Courts-Martial Appeal Court against the finding⁴.

¹ The test of insanity for this purpose is the same as that which applies in a Crown Court in England or Wales: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 31-33. It is for the defence to raise the issue; and the burden of proof of insanity rests upon the defence, although proof on the balance of probabilities, as distinct from proof beyond reasonable doubt, suffices: see *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1370, 1372. As to the trial of the issue whether the accused is fit to be tried see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1265.

² Army Act 1955 s 116(2); Air Force Act 1955 s 116(2) (both amended by the Criminal Procedure (Insanity) Act 1964 s 7, Sch 2 Pt I).

As from a day to be appointed, it is provided that where on the trial of a person by court-martial the court is satisfied, as respects the charge or any of the charges on which he is being tried, that the accused did the act or made the omission charged against him as the offence but that at the time of that act or omission he was insane, the court must find that the accused was not guilty of that offence by reason of insanity: Army Act 1955 s 116(1) (s 116 prospectively substituted, and ss 115A, 115B, 116A-116E prospectively added, by the Armed Forces Act 1996 s 8, Sch 2 para 1); Air Force Act 1955 s 116(1) (s 116 prospectively substituted, and ss 115A, 115B, 116A-116E prospectively added, by the Armed Forces Act 1996 Sch 2 para 1). However, no such finding may be made except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved: Army Act 1955 s 116(2); Air Force Act 1955 s 116(2) (both as so prospectively substituted). At the date at which this volume states the law no such day had been appointed. For the meaning of 'duly approved', and as to the making of provision in connection with the receipt in evidence of reports of registered medical or mental health practitioners, see para 500 note 11 ante.

³ Army Act 1955 s 116(2), (3) (s 116(2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2 Sch 1 Pt I); Air Force Act 1955 s 116(2), (3) (s 116(2) amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, Sch 1 Pt I). These provisions enable the Home Secretary to direct that the accused be removed to and detained in a specified hospital: see the Mental Health Act 1983 s 46 (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 499. As to the Defence Council see para 2 ante. Regulations made by the Defence Council, not being statutory instruments, are not recorded in this work.

As from a day to be appointed, it is provided that where an accused is found not guilty by reason of insanity, the court must make in respect of him either an admission order, a guardianship order, a supervision and treatment order, or an order discharging him absolutely, as the court thinks most suitable in all the circumstances of the case: see the Army Act 1955 s 116A(1)(b), (2); and the Air Force Act 1955 s 116A(1)(b), (2) (both as prospectively added: see note 2 supra). At the date at which this volume states the law no such day had been appointed. Further provision is made as to the circumstances in which these orders may be made (see the Army Act 1955 s 116A(3)-(5); and the Air Force Act 1955 s 116A(3)-(5) (both as so prospectively added)) and the procedural requirements for the making of them. As to admission orders see the Army Act 1955 s 116B; and the Air Force Act 1955 s 116B (both as so prospectively added). As to guardianship orders see the Army Act 1955 s 116C; and the Air Force Act 1955 s 116C (both as so prospectively added). As to supervision and treatment orders see the Army Act 1955 s 116D; and the Air Force Act 1955 s 116D (as so prospectively added).

⁴ See the Courts-Martial (Appeals) Act 1968 ss 21-23 (as amended); and para 545 post. As from a day to be appointed, ss 21, 22 are prospectively further amended, s 23 is prospectively substituted, and s 23A is prospectively added, by the Armed Forces Act 1996 Sch 2 paras 7-9. See further para 545 post.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

506 Finding as to insanity of accused

NOTES 2-4--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 Sch 11.

NOTE 4--1986 Act ss 21, 22 amended, s 23 substituted: 2004 Act Sch 3 paras 8-10.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/507. Findings.

507. Findings.

After the court has been closed for deliberation on the findings, no further evidence may be heard¹. Every question to be determined must be determined by a majority of the votes of the members of the court², and where there is an equality of votes on the finding the court must acquit the accused³. On each charge the court may, by way of an alternative to a finding of guilty or not guilty, record a special finding⁴. As soon as the court has decided upon its findings and recorded them⁵ the court must be reopened and the findings announced by the president⁶, and if the judge advocate is satisfied that the findings are correct in law, he must sign the record of the findings⁷. It is open to the judge advocate, where the interests of justice require it, to question the court on any finding of fact reached during its deliberations⁸.

1 This is a well-established principle relating to jury trials (see, eg, *R v Davis* (1975) 62 Cr App Rep 194 at 201, CA, per Lord Widgery CJ: 'the jury may not when they have once retired to consider their verdict be given any additional ... matter or material to assist them'; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1332), which must, if it is submitted, also be applicable to trials by court-martial. However, if the lay members of the court require further direction on the law it must suspend its deliberations to seek further directions in open court: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(2); the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(2); and para 502 ante. The court may not separate until it reaches its verdict unless the judge advocate, in the interests of justice, directs otherwise: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(3); the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(3); and para 502 ante. Although the rules make no specific provision, it is submitted that a direction similar to that given in the Crown Court if the jury separates should be given by the judge advocate, adopting the guidance given in *R v Oliver* (1996) 2 Cr App Rep 514, CA (as to which see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1332).

2 Army Act 1955 s 96(1) (amended by Armed Forces Act 1996 s 5, Sch 1 paras 17, 27(1), (2)); Air Force Act 1955 s 96(1) (amended by Armed Forces Act 1996 Sch 1 paras 33, 43(1), (2)). When giving their opinions as to the findings, the president and members are required to do so orally, on each charge separately, and in order of seniority, beginning with the junior in rank: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 70(4); the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 70(4); and para 502 ante. The judge advocate is not entitled to vote on the finding: Army Act 1955 s 96(1A) (added by Armed Forces Act 1996 Sch 1 paras 17, 27(1), (3)); Air Force Act 1955 s 96(1A) (added by Armed Forces Act 1996 Sch 1 paras 33, 43(1), (3)).

3 Army Act 1955 s 96(2); Air Force Act 1955 s 96(2). Thus, in such a case, the president has no second or casting vote, unlike the position where there is an equality of votes on sentence or on any other matter except the finding (see the Army Act 1955 s 96(5); the Air Force Act 1955 s 96(5) (both as amended); and para 501 ante).

4 A special finding is, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 71(1); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 71(1). The court may not reach a special finding unless it appears that the difference is not so material as to have prejudiced the accused in his defence: Courts-Martial (Army) Rules 1997, SI 1997/169, r 71(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 71(2). The special findings also include a finding of guilty in circumstances involving lesser punishment, a finding of guilty of attempting to commit the offence (including a civil offence) charged, a finding of guilty of a lesser offence than that charged (see the Army Act 1955 s 98, Sch 3 (Sch 3 as amended); and the Air Force Act 1955 s 98, Sch 3 (Sch 3 as amended)) and a finding of not guilty by reason of insanity (see para 506 ante). If the court reaches a finding of guilt on a special finding and the judge advocate is of the opinion that the finding is contrary to law he must direct the court on the findings that are open to it and the court must retire to reconsider: Courts-Martial (Army) Rules 1997, SI 1997/169, r 72(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 72(3). As to the review of findings, including special findings, see para 512 post.

5 The finding of the court must be recorded in writing and signed and dated by the president: Courts-Martial (Army) Rules 1997, SI 1997/169, r 72(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 72(1).

6 Courts-Martial (Army) Rules 1997, SI 1997/169, r 72(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 72(2).

7 Courts-Martial (Army) Rules 1997, SI 1997/169, r 72(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 72(4).

8 Courts-Martial (Army) Rules 1997, SI 1997/169, r 73; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 73.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/508. Sentencing.

508. Sentencing.

After a plea of guilty has been accepted and recorded¹ the prosecutor must place before the court details of the accused's service and civilian record and of his pay and pension², and the court must consider any pre-sentence report concerning the accused in the possession of the court administration officer³. Thereafter the accused may give evidence on oath and call witnesses in mitigation of sentence and as to his character, produce any documents or reports (which need not comply with the strict rules of evidence unless the prosecution so requires), and address the court in mitigation⁴. The court will then close to deliberate on sentence, which is by a majority⁵, the president having a casting vote where votes are equal⁶. The sentence of the court is recorded, dated and signed⁷ and the accused is brought back before the court and reasons for sentence are given by the judge advocate⁸ before the president announces the sentence⁹. The judge advocate will deal with any issue as to costs¹⁰, and when the whole matter is concluded dissolve the court¹¹.

¹ See para 501 ante.

² See the Courts-Martial (Army) Rules 1997, SI 1997/169, r 76(2), (3), (5) (r 76(2) amended by SI 2000/2375); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 76(2), (3), (5) (r 76(2) amended by SI 2000/2375); and see also, in connection with civilian defendants, the Courts-Martial (Army) Rules 1997, SI 1997/169, r 84, Sch 6 Pt I; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 84, Sch 6 Pt I.

³ Courts-Martial (Army) Rules 1997, SI 1997/169, rr 75, 76(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, rr 75, 76(4). As to the court administration officer see para 480 note 5 ante.

⁴ Courts-Martial (Army) Rules 1997, SI 1997/169, r 77; Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 77.

⁵ Army Act 1955 s 96(1) (amended by the Armed Forces Act 1996 s 5, Sch 1 paras 17, 27(1), (2)); Air Force Act 1955 s 96(1) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 43(1), (2)).

⁶ Army Act 1955 s 96(5) (amended by the Armed Forces Act 1996 s 35, Sch 1 paras 17, 27(1), (5), Sch 7 Pt I); Air Force Act 1955 s 96(5) (amended by the Armed Forces Act 1996 Sch 1 paras 33, 43(1), (5), Sch 7 Pt I). The time spent in custody by an individual must be taken into account by the court-martial in sentencing: see *R v General Officer Commanding, Second Division, The Army, ex p Buchanan* (1998) Times, 20 October.

⁷ Courts-Martial (Army) Rules 1997, SI 1997/169, r 80(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 80(1).

⁸ Courts-Martial (Army) Rules 1997, SI 1997/169, r 80(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 80(2).

⁹ Courts-Martial (Army) Rules 1997, SI 1997/169, r 80(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 80(3).

¹⁰ As to costs see para 513 post.

¹¹ Courts-Martial (Army) Rules 1997, SI 1997/169, r 81(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 81(2).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

508 Sentencing

NOTES--The Armed Forces Act 2006 s 273 now gives the Attorney General the power to refer a case to the Court Martial Appeal Court if he considers that the sentence passed by the Court Martial in respect of the offence is unduly lenient. See also the Armed Forces (Review of Court Martial Sentence) Order 2009, SI 2009/1168. Where the Court Martial Appeal Court has concluded its review of a case under the Armed Forces Act 2006 s 273, the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed in the proceedings: see s 274. As to the power of the Secretary of State to make provision by regulations with respect to references under ss 273 and 274, see s 275; and as to the regulations so made, see the Armed Forces (Review of Court Martial Sentence) (Supplementary Provision) Regulations 2009, SI 2009/1169.

NOTE 11--See also the Courts-Martial (Review of Sentencing) (Categories of Offences) Order 2007, SI 2007/711.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/509. Release of accused after acquittal or if a non-custodial penalty is imposed; and conclusion of the trial.

509. Release of accused after acquittal or if a non-custodial penalty is imposed; and conclusion of the trial.

If the accused is acquitted of the charges or does not receive a sentence involving loss of liberty he will be released unless he is in military custody for some other charge¹. The formal record of proceedings, which must include the record of findings and sentence (if any), must then be signed by the judge advocate and the president². When each charge on the charge-sheet or sheets has been disposed of, the president must announce in open court that the trial is concluded³, and the judge advocate will thereupon dissolve the court⁴.

1 As to the keeping of persons in custody without charge see para 339 ante.

2 Courts-Martial (Army) Rules 1997, SI 1997/169, r 35(1), (5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 35(1), (5). A certified transcript or note of evidence given at the court-martial and any preliminary proceedings must be kept with the record of proceedings: Courts-Martial (Army) Rules 1997, SI 1997/169, r 35(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 35(2). Any transcript of a shorthand note must be signed by the shorthand writer; and any transcript of a mechanical record must be signed by the person who transcribed it: Courts-Martial (Army) Rules 1997, SI 1997/169, r 35(3), (4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 35(3), (4).

3 Courts-Martial (Army) Rules 1997, SI 1997/169, r 81(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 81(1).

4 Courts-Martial (Army) Rules 1997, SI 1997/169, r 81(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 81(2).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(iv) The Trial/510. Restitution and compensation in respect of property unlawfully obtained.

510. Restitution and compensation in respect of property unlawfully obtained.

A person convicted by court-martial of unlawfully obtaining property, whether by stealing it, handling it, or otherwise, may be ordered by the court-martial by which he is convicted¹ to deliver or pay to its apparent owner² any property so obtained and found in his possession³, or any other property, other than money, which he appears to have obtained by the conversion or exchange of any of the property unlawfully obtained⁴. Where money, however obtained, is found in the possession of the offender he may be ordered to pay out of that money to the apparent owner of the property unlawfully obtained a specified sum in compensation for any loss caused by the offence and not otherwise made good⁵. Similarly, where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, then subject to his restoring the property to its owner an order may be made for the payment to him, out of any money found in the possession of the offender (whether or not such money appears to be the proceeds of the sale or giving in pawn), of a specified sum as or towards compensation for his loss due to the sale or giving in pawn⁶. Likewise, an order may be made for the return by the offender of property which he has received in exchange for that which he unlawfully obtained, for the relief of any person who has exchanged the property not then knowing it to have been unlawfully obtained, subject to the restitution to its owner of the property unlawfully obtained and disposed of in exchange⁷. Any such order may also be made where a person has been convicted by a court-martial of any offence and the court has taken an offence of unlawfully obtaining property into consideration in sentencing him⁸.

The operation of any order for restitution or compensation made by virtue of these provisions must normally be suspended pending an application to the Courts-Martial Appeal Court for leave to appeal against the conviction in respect of which the order was made⁹, and (if such an application is lodged) pending its refusal or withdrawal or the determination or abandonment of the appeal¹⁰. Where the operation of the order is thus suspended it cannot take effect if the conviction is quashed on appeal¹¹.

A restitution order does not bar the right of any person other than the offender or a person claiming through him to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid¹².

1 Army Act 1955 s 138(7); Air Force Act 1955 s 138(7). Orders for these purposes may also be made by the reviewing authority: Army Act 1955 s 138(7); Air Force Act 1955 s 138(7). As to reviewing authorities see para 512 post. Any order made by a court-martial by virtue of these provisions is subject to review: see the Army Act 1955 s 138(8); and the Air Force Act 1955 s 138(8) (both amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II).

2 I.e. the person who appears to the court-martial (or other person or authority: see note 1 supra) making the order to be the owner: Army Act 1955 s 138(7); Air Force Act 1955 s 138(7) (both amended by the Armed Forces Act 1996 Sch 7 Pt II).

3 Army Act 1955 s 138(1), (2) (s 138(1) amended by the Theft Act 1968 s 33(2), Sch 2 Pt II; and by the Armed Forces Act 1971 s 77(1), Sch 4 Pt I); Air Force Act 1955 s 138(1), (2) (s 138(1) amended by the Theft Act 1968 Sch 2 Pt II; and by the Armed Forces Act 1971 Sch 4 Pt I).

4 Army Act 1955 s 138(1), (3) (s 138(1) as amended: see note 3 supra); Air Force Act 1955 s 138(1), (3) (s 138(1) as amended: see note 3 supra).

5 Army Act 1955 s 138(4); Air Force Act 1955 s 138(4). The reference in the text to losses not otherwise made good is a reference to losses not otherwise made good by way of an order for stoppages under the Army Act 1955 s 71(1)(k) (as amended) or the Air Force Act 1955 s 71(1)(k) (as amended) (see para 424 ante) or by the recovery of the property unlawfully obtained: Army Act 1955 s 138(4); Air Force Act 1955 s 138(4). As to the corresponding power of a court-martial to make a compensation order where the offender is a civilian see para 430 ante.

6 Army Act 1955 s 138(5); Air Force Act 1955 s 138(5).

7 Army Act 1955 s 138(6); Air Force Act 1955 s 138(6).

8 Army Act 1955 s 138(1); Air Force Act 1955 s 138(1) (both amended by the Armed Forces Act 1976 s 14, Sch 7 para 1(1)).

9 See the Army Act 1955 s 138(9)(a), (12)(a) (s 138(9)(a) amended by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; and by the Armed Forces Act 1976 Sch 7 para 1(2); Army Act 1955 s 138(12) added by the Armed Forces Act 1976 Sch 7 para 1(3)); and the Air Force Act 1955 s 138(9)(a), (12)(a) (s 138(9)(a) amended by the Courts-Martial (Appeals) Act 1968 Sch 4; and by the Armed Forces Act 1976 Sch 7 para 1(2); Air Force Act 1955 s 138(12) added by the Armed Forces Act 1976 Sch 7 para 1(3)). If the order for restitution was made in respect of an offence taken into consideration when sentencing the offender for another offence or offences of which the court-martial had convicted him, the application for leave to appeal is against the conviction, or each conviction, in respect of which the sentence fell to be determined: Army Act 1955 s 138(12)(b); Air Force Act 1955 s 138(12)(b) (both as so added).

10 Army Act 1955 s 138(9)(b); Air Force Act 1955 s 138(9)(b). However, the operation of such an order is not suspended (so far as it relates to the delivery of property to the person appearing to be its owner) if the court, person or authority making it, being of the opinion that the title to the property is not in dispute, directs that the order is not to be suspended: Army Act 1955 s 138(10); Air Force Act 1955 s 138(10) (both amended by the Armed Forces Act 1996 Sch 7 Pt II).

11 Army Act 1955 s 138(9)(c); Air Force Act 1955 s 138(9)(c). On the hearing of such an appeal, the Courts-Martial Appeal Court may annul or vary the order even though the conviction appealed against is not quashed: Army Act 1955 s 138(9)(d); Air Force Act 1955 s 138(9)(d). Provision is also made for the continuation of the suspension of the operation of the order pending an appeal to the House of Lords: see the Courts-Martial (Appeals) Act 1968 s 46 (amended by the Armed Forces Act 1996 s 17(5)). Rules of court provide for the safeguarding of property or money to which a suspended order relates: see the Army Act 1955 s 138(9)(e); and the Air Force Act 1955 s 138(9)(e) (both amended by the Courts-Martial (Appeals) Act 1968 Sch 4. See the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 20.

12 Army Act 1955 s 138(11); Air Force Act 1955 s 138(11). This provision preserves the right of a person (other than the offender or a person claiming under him) who contends that he is the true owner of property delivered or paid to another person in pursuance of an order made by virtue of these provisions to take civil proceedings against that person with a view to establishing his title and recovering the property.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

510 Restitution and compensation in respect of property unlawfully obtained

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 11--Courts-Martial (Appeals) Act 1968 s 46 repealed: Armed Forces Act 2006 Sch 8 para 44. SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(v) Post-trial Matters/511. Rights of accused as to petitioning.

(v) Post-trial Matters

511. Rights of accused as to petitioning.

An accused who has been found guilty of any offence by a court-martial may present a petition to the Defence Council against finding or sentence or both¹. If the accused has been found not guilty by reason of insanity or unfit to stand his trial, the findings are also subject to review, and the reviewing authority has the power to substitute any finding to which the court-martial could have come². Where a parent or guardian has been ordered to pay a fine or compensation order in respect of a civilian offender aged under 17, the parent or guardian may also present a petition in accordance with these provisions³. A petition is a pre-condition of appeal to the Courts-Martial Appeal Court⁴.

1 Army Act 1955 s 113(1) (s 113 substituted by the Armed Forces Act 1996 s 16, Sch 5 paras 1, 4); Air Force Act 1955 s 113(1) (s 113 substituted by the Armed Forces Act 1996 Sch 5 paras 1, 4). As to the Defence Council see para 2 ante. The petition must be presented within 28 days following the day on which the sentence is passed: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 6(1)(b) (substituted by SI 1997/580); Courts-Martial (Army) Rules 1997, SI 1997/169, r 82(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 82(1). The petition must be in writing and signed by the accused or his legal advisor and should be presented and set out in accordance with statutory guidelines: see the Courts-Martial (Army) Rules 1997, SI 1997/169, r 82(2)-(5), Sch 5; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 82(2)-(5), Sch 5. See further para 512 post.

2 Army Act 1955 s 116(5); Air Force Act 1955 s 116(5) (both amended by the Criminal Procedure (Insanity) Act 1964 Sch 2 Pt I). As to a finding of unfitness to stand trial see para 500 ante. As to a finding of not guilty by reason of insanity see para 506 ante.

As from a day to be appointed, the Army Act 1955 s 116 is substituted, and ss 115A, 115B, 116A-116E are added, and the Air Force Act 1955 s 116 is substituted, and ss 115A, 115B, 116, 116A-116E are added, by the Armed Forces Act 1996 s 8, Sch 2 para 1; and it is provided that findings of unfitness to stand trial and not guilty by reason of insanity are subject to the appropriate mental health legislation (ie the Mental Health Act 1983) which makes provision as to the review of the detention of persons subject to such findings (see the Army Act 1955 ss 116A(5), 116E(1); and the Air Force Act 1955 s 116A(5), 116E(1) (all as so prospectively added)). See also the Mental Health Act 1983 Pt V (ss 65-79) (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 560 et seq. At the date at which this volume states the law no such day had been appointed.

3 Army Act 1955 s 209(3)(a)(iii), Sch 5A para 13(3)(a) (s 209(3)(a) substituted by the Armed Forces Act 1976 s 22(5), Sch 9 para 5; Army Act 1955 Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 13(3) substituted by the Armed Forces Act 1981 s 10, Sch 1 para 3(1), (6); and amended by the Armed Forces Act 1996 s 35(1), Sch 6 para 7); Air Force Act 1955 s 209(3)(a)(iii), Sch 5A para 13(3)(a) (s 209(3)(a) substituted by the Armed Forces Act 1976 Sch 9 para 5; Air Force Act 1955 Sch 5A added by the Armed Forces Act 1976 Sch 4 para 1; Air Force Act 1955 Sch 5A para 13(3) substituted by the Armed Forces Act 1981 Sch 1 para 3(1), (6); and amended by the Armed Forces Act 1996 Sch 6 para 7). As to orders binding over a young offender's parents see para 438 ante.

4 See the Courts-Martial (Appeals) Act 1968 s 8(2)(a); and para 532 post.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by

Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

511 Rights of accused as to petitioning

NOTE 1--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTE 2--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 s 58(2), Sch 11.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(v) Post-trial Matters/512. Review of finding and sentence.

512. Review of finding and sentence.

The army and air force have a system under which every conviction and sentence of a court-martial is automatically reviewed by the reviewing authority¹, which may quash a guilty finding and any sentence passed in consequence of it², substitute an alternative finding and sentence³, quash or substitute a sentence (without reviewing the finding)⁴, or order a retrial⁵. For these purposes, the reviewing authority is the Defence Council or any officer to whom all or any of the powers of the Defence Council as reviewing authority may be delegated⁶. Review must, if it does not begin earlier, begin as soon as practicable after the petition, if any, has been presented or, in any other case, when the time for presenting a petition has run out⁷.

The reviewing authority may substitute an alternative guilty finding only if that finding could have been validly made by the court-martial and the authority is of the opinion that the court-martial must have been satisfied of facts which would justify the making of that finding⁸; subject to this, the authority may substitute any finding of guilt which could have been validly made by the court-martial on the charge before it⁹ or, if the court-martial recorded no finding on a charge alternative to a charge on which the court made the finding being reviewed, a finding of guilt on that alternative charge¹⁰. Where the authority substitutes a finding it may pass in consequence of it such sentence open to a court-martial on making such a finding as appears proper¹¹.

In so far as review is of sentence only, the reviewing authority may revoke any order postponing the sentence¹², remit the whole or part of any sentence¹³, commute the punishment¹⁴, or order that the balance of the sentence be suspended¹⁵ or that the sentence is not to have effect until the end of a specified period¹⁶. Subject to this, the authority may substitute any sentence which was open to the court-martial provided that it may not substitute any sentence which in its opinion is more severe than the sentence originally passed¹⁷. In certain circumstances the authority may also annul the taking into consideration of other offences in the original sentencing¹⁸ and may give directions as to the commencement of sentences¹⁹.

Any substituted finding or sentence, including a sentence having effect after the remission or commutation of punishment, is treated for all purposes as having been passed by the court and has effect from the date of promulgation²⁰, and on completing a review the reviewing authority must give reasons for its decision²¹.

Where the reviewing authority quashes a conviction it may make an order authorising the appellant to be retried by court-martial²². The authority may direct that the person is retried on a fresh charge or charges specified in the direction²³; however, whether the person is so retried or is retried on one or more of the original charges, no fresh investigation or other steps may be taken²⁴ in relation to the charge or charges on which he is to be retried²⁵. The court-martial conducting the retrial must be convened within three months from the date of the order authorising the retrial²⁶, and, where the person is again convicted, may pass in respect of the offence any authorised sentence²⁷ not being a sentence of greater severity than that passed on the original conviction²⁸.

1 Army Act 1955 s 113(2) (s 113 substituted, and s 113AA added, by the Armed Forces Act 1996 s 16, Sch 5 paras 1, 4); Air Force Act 1955 s 113(2) (s 113 substituted, and s 113AA added, by the Armed Forces Act 1996 Sch 5 paras 1, 4). Although review is automatic, an accused is also entitled to petition the reviewing authority in

respect of the court's finding, sentence, or both: see the Army Act 1955 s 113(1); the Air Force Act 1955 s 113(1) (both as substituted); and para 511 ante.

2 See the Army Act 1955 s 113AA(1), (2)(a); and the Air Force Act 1955 s 113AA(1), (2)(a) (both as added: see note 1 supra).

3 See the Army Act 1955 s 113AA(1), (2)(b); and the Air Force Act 1955 s 113AA(1), (2)(b) (both as added: see note 1 supra). See the text and notes 8-21 infra.

4 See the Army Act 1955 s 113AA(4); and the Air Force Act 1955 s 113AA(4) (both as added: see note 1 supra). See the text and notes 22-28 infra.

5 See the Army Act 1955 s 113A; and the Air Force Act 1955 s 113A (both as added and amended). See the text and notes 26-28 infra. See also the cases cited in para 304 note 22 ante.

6 Army Act 1955 s 113(5); Air Force Act 1955 s 113(5) (both as substituted: see note 1 supra). As to the Defence Council see para 2 ante.

7 Army Act 1955 s 113(3); Air Force Act 1955 s 113(3) (both as substituted: see note 1 supra). As to the presentation of a petition and the time limits see para 511 ante. Where an application for leave to appeal to the Courts-Martial Appeal Court against finding or sentence has been made before review has been completed the reviewing authority will continue the review unless leave to appeal is granted in which case the reviewing authority must cease consideration: Army Act 1955 s 113(4); Air Force Act 1955 s 113(4) (both as so substituted).

8 Army Act 1955 s 113AA(2)(b); Air Force Act 1955 113AA(2)(b) (both as added: see note 1 supra).

9 Army Act 1955 s 113AA(3)(a); Air Force Act 1955 113AA(3)(a) (both as added: see note 1 supra).

10 Army Act 1955 s 113AA(3)(b); Air Force Act 1955 113AA(3)(b) (both as added: see note 1 supra).

11 Army Act 1955 s 113AA(2); Air Force Act 1955 113AA(2) (both as added: see note 1 supra). The court-martial may also by order suspend the sentence or provide that the sentence is not to take effect until the end of a specified period or, if the sentence has had effect, that the sentence is to cease to have effect until the end of a specified period: Army Act 1955 s 120(3) (substituted by the Armed Forces Act 1996 s 35(1), Sch 6 para 4(1)(b)); Air Force Act 1955 s 120(3) (substituted by the Armed Forces Act 1996 Sch 6 para 4(1)(b)); Army Act 1955 s 120A(2) (s 120A added by the Armed Forces Act 1996 s 9(1)); Air Force Act 1955 s 120A(2) (s 120A added by the Armed Forces Act 1996 s 9(1)). As to the suspension and postponement of sentences see para 514 post. The substitute sentence must not be one which in the opinion of the authority is more severe than the sentence originally passed: Army Act 1955 s 113AA(2); Air Force Act 1955 113AA(2) (both as so added). As to the scale of punishments see para 424 et seq ante; and see also, in connection with the relative severity of substitute sentences, *R v Rugg* (1998) Times, 17 February, C-MAC.

12 Army Act 1955 s 113AA(5)(a); Air Force Act 1955 113AA(5)(a) (both as added: see note 1 supra). Orders postponing sentences are made under the Army Act 1955 s 120A(1) (as added) and the Air Force Act 1955 s 120A(1) (as added): see para 514 post.

13 Army Act 1955 s 113AA(5)(b); Air Force Act 1955 113AA(5)(b) (both as added: see note 1 supra). As to the remission of sentences see also the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 28-32 (amended by SI 1991/826); the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 28-32 (amended by SI 1991/825). As to the making of imprisonment and detention rules see para 515 post. As to the automatic remission of a suspended sentence the suspension of which has not been determined within one year from the date on which it took effect see para 514 note 1 post.

14 Army Act 1955 s 113AA(5)(c); Air Force Act 1955 113AA(5)(c) (both as added: see note 1 supra). This involves commuting any punishment for one or more punishments provided by the Army Act 1955 or the Air Force Act 1955 (as to which see para 424 et seq ante), being less than the punishment commuted: Army Act 1955 s 113AA(5)(c); Air Force Act 1955 113AA(5)(c) (both as so added).

15 Army Act 1955 s 120(3); Air Force Act 1955 s 120(3) (both as substituted: see note 11 supra). As to the suspension of sentences see para 514 post.

16 Army Act 1955 s 120A(3); Air Force Act 1955 s 120A(3) (both as added: see note 11 supra). As to the postponement of sentences see para 514 post.

17 Army Act 1955 s 113AA(4); Air Force Act 1955 113AA(4) (both as added: see note 1 supra).

18 See the Army Act 1955 s 113AA(6); and the Air Force Act 1955 113AA(6) (both as added: see note 1 supra). These provide that where it appears to the reviewing authority that in sentencing the accused the court-martial exceeded or erroneously exercised its powers to take other offences into consideration it must, whether or not it substitutes a different sentence or remits or commutes punishment, annul the taking into consideration of the other offence or offences in question and any orders dependent thereon, and that where the authority so acts the offence or offences are to be treated for all purposes as not having been taken into consideration.

19 See the Army Act 1955 s 118(2); the Air Force Act 1955 s 118(2) (both as amended); and para 514 post.

20 Army Act 1955 s 113AA(7); Air Force Act 1955 113AA(7) (both as added: see note 1 supra).

21 Courts-Martial (Army) Rules 1997, SI 1997/169, r 83; Courts-Martial (Army) Rules 1997, SI 1997/169, r 83. This requirement applies where a petition has been presented or where it exercises its autonomous powers of review: Courts-Martial (Army) Rules 1997, SI 1997/169, r 83; Courts-Martial (Army) Rules 1997, SI 1997/169, r 83.

22 Army Act 1955 s 113A(1) (s 113A added by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; Army Act 1955 s 113A(1) amended by the Armed Forces Act 1996 Sch 5 paras 1, 5(a)); Air Force Act 1955 s 113A(1) (s 113A added by the Courts-Martial (Appeals) Act 1968 Sch 4; Air Force Act 1955 s 113A(1) amended by the Armed Forces Act 1996 Sch 5 paras 1, 5(a)); Courts-Martial (Appeals) Act 1968 s 19(1). This power is exercisable only where it appears to the court that the interests of justice require that such an order be made (Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 19(1) (amended by the Armed Forces Act 1991 s 26, Sch 2 para 8, Sch 3)), and has effect notwithstanding the restrictions on retrial imposed by the Army Act 1955 s 134 and the Air Force Act 1955 s 134 (both as amended) (see para 486 ante) (Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 19(2)). Any document purporting to be an order made by the reviewing authority in pursuance of this power is evidence of the making of the order and of its contents: Army Act 1955 s 113A(2) (as so added; amended by the Armed Forces Act 1996 Sch 5 paras 1, 5(b)); Air Force Act 1955 s 113A(2) (as so added; amended by the Armed Forces Act 1996 Sch 5 paras 1, 5(b)).

Where the reviewing authority authorises a retrial it may make such orders as appear to be necessary or expedient for the retention (until the expiration of the three-month period within which the new court-martial must be convened or, if during that period a court-martial has been so convened, the time when his case is finally disposed of (provided that where the appellant is found guilty on his retrial, this period ends with the expiration of the period of 28 days beginning with the date of the finding)) of property or money which has been restored, delivered or paid in pursuance of an order made on or in consequence of the original conviction or has been placed in safe custody while the operation of any such order is suspended: Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 20(2), (5). Where retrial is authorised in the case of a person who immediately before the date of the authorisation was liable to be detained in pursuance of a direction under the Mental Health Act 1983 Pt III (ss 35-55) (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) para 486 et seq), that direction must continue in force until the expiration of the three-month period within which the new court-martial must be convened or, if during that period a court-martial has been so convened, the time when his case is finally disposed of, as if the conviction had not been quashed: Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 20(3)-(5) (s 20(4) amended by the Mental Health Act 1983 s 148, Sch 4 para 24).

23 Army Act 1955 s 113A(1) (as added and amended: see note 22 supra); Air Force Act 1955 s 113A(1) (as added and amended: see note 22 supra); Courts-Martial (Appeals) Act 1968 s 19(4). An appellant may not be retried for an offence other than the offence of which he was convicted by the original court-martial and in respect of which his appeal is allowed by the reviewing authority, for any offence of which he could have been convicted at the original court-martial on a charge of the first-mentioned offence, or for any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence: Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 19(3).

Any document purporting to be a direction given by the reviewing authority in pursuance of this power is evidence of the giving of the direction and of its contents: Army Act 1955 s 113A(2); Air Force Act 1955 s 113A(2) (both as so added and amended).

24 Ie under the Army Act 1955 s 76 (as substituted), s 76A (as added) or the Air Force Act 1955 s 76 (as substituted), s 76A (as added); see paras 353-354 ante.

25 Army Act 1955 s 113A(1) (as added and amended: see note 22 supra); Air Force Act 1955 s 113A(1) (as added and amended: see note 22 supra); Courts-Martial (Appeals) Act 1968 s 19(4). However, the record of the evidence given by any witness at the original trial may under certain circumstances be read as evidence at the retrial: see the Army Act 1955 s 113A(1) (as so added and amended); the Air Force Act 1955 s 113A(1) (as so added and amended); and the Courts-Martial (Appeals) Act 1968 s 20(6), Sch 1 paras 3, 5.

26 Army Act 1955 s 113A(1) (as added and amended: see note 22 supra); Air Force Act 1955 s 113A(1) (as added and amended: see note 22 supra); Courts-Martial (Appeals) Act 1968 s 20(1). This provision has effect notwithstanding the limitation periods established under the Army Act 1955 s 132 (as amended) or the Air Force Act 1955 s 132 (as amended) (see para 304 ante); Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 20(1).

27 In any sentence authorised under the Army Act 1955 or the Air Force Act 1957: see para 424 et seq ante.

28 Army Act 1955 s 113A(1) (as added and amended: see note 22 supra); Air Force Act 1955 s 113A(1) (as added and amended: see note 22 supra); Courts-Martial (Appeals) Act 1968 Sch 1 paras 4, 6. Where a person authorised to be retried is convicted on retrial and sentenced to imprisonment or detention, any time before the original conviction was quashed which would have been taken into account in calculating the period for which he would have been liable to be imprisoned or detained in pursuance of a sentence of imprisonment or detention imposed at the original trial, and any time after the quashing of his original conviction which he has spent under close arrest awaiting retrial, must be taken into account in calculating the period for which he is liable to imprisonment or to be detained in pursuance of that sentence: Army Act 1955 s 113A(1) (as so added and amended); Air Force Act 1955 s 113A(1) (as so added and amended); Courts-Martial (Appeals) Act 1968 s 20(6), Sch 1 para 7.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

512 Review of finding and sentence

NOTES--The Armed Forces Act 2006 s 273 now gives the Attorney General the power to refer a case to the Court Martial Appeal Court if he considers that the sentence passed by the Court Martial in respect of the offence is unduly lenient. See also the Armed Forces (Review of Court Martial Sentence) Order 2009, SI 2009/1168. Where the Court Martial Appeal Court has concluded its review of a case under the Armed Forces Act 2006 s 273, the Attorney General or the offender may refer to the Supreme Court a point of law involved in any sentence passed in the proceedings: see s 274. As to the power of the Secretary of State to make provision by regulations with respect to references under ss 273 and 274, see s 275; and as to the regulations so made, see the Armed Forces (Review of Court Martial Sentence) (Supplementary Provision) Regulations 2009, SI 2009/1169.

NOTE 11--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

TEXT AND NOTES 22-25--Courts-Martial (Appeals) Act 1968 s 19(1)-(4) amended, s 19(5) added: Armed Forces Act 2006 Sch 8 para 20.

NOTE 22--Courts-Martial (Appeals) Act 1968 s 20(2A), (3A) added, s 20(3) amended, s 20(4) further amended, s 20(5) repealed: Armed Forces Act 2006 Sch 8 para 21(b)-(f).

NOTES 25, 28--Courts-Martial (Appeals) Act 1968 s 20(6) amended: Armed Forces Act 2006 Sch 8 para 21(g).

TEXT AND NOTE 26--Courts-Martial (Appeals) Act 1968 s 20(1)-(1H) substituted for s 20(1): Armed Forces Act 2006 Sch 8 para 21(a).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(v) Post-trial Matters/513. Costs.

513. Costs.

As from a day to be appointed¹, the Secretary of State² may by regulations³ make provision empowering courts-martial, in any case where the court is satisfied that one party to proceedings for an offence under any of the service discipline Acts⁴ has incurred costs⁵ as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs⁶. It is also provided that in any proceedings for an offence under any of the service discipline Acts, a court-martial may disallow, or (as the case may be) order the legal or other representative⁷ concerned to meet, the whole of any wasted costs⁸ or such part of them as may be determined in accordance with regulations⁹. At the date at which this volume states the law no such day had been appointed.

1 The Armed Forces Act 2001 ss 26-28 are to be brought into force as from a day to be appointed by order under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 The regulations must provide that a person against whom an order is made by a court-martial under the regulations may appeal to the Courts-Martial Appeal Court: Armed Forces Act 2001 s 26(3)(a) (not yet in force). They may, in particular: (1) allow the making of an order as to the payment of costs at any time during the proceedings; (2) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 or under any legal aid scheme operated by any of Her Majesty's forces; (3) make provision as to the account to be taken of such an order in the making of any other order as to costs in respect of the proceedings; and (4) make provision as to appeals against orders made by virtue of the regulations: Armed Forces Act 2001 s 26(2)(a)-(c), (e) (not yet in force). As to the Courts-Martial Appeal Court see para 529 et seq post. As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

4 As to the service discipline Acts see para 302 ante.

5 Where any of Her Majesty's forces incurs costs in respect of the exercise by the prosecuting authority of its functions as a party to proceedings under the service discipline Acts, those costs are taken for these purposes to have been incurred by the prosecuting authority (Armed Forces Act 2001 s 28(1) (not yet in force)), although regulations under s 26 (not yet in force) or s 27 (not yet in force) may make provision as to the costs incurred by any of Her Majesty's forces which are or are not to be taken to have been incurred by the prosecuting authority and as to the person to whom, or account into which, any payment in respect of costs incurred by the prosecuting authority is to be made (s 28(2) (not yet in force)). For these purposes, 'the prosecuting authority' means the prosecuting authority appointed under the Army Act 1955 s 83A (as added) or the Air Force Act 1955 s 83A (as added) (see para 315 ante), as the case may be: Armed Forces Act 2001 s 28(3) (not yet in force).

6 Ibid s 26(1) (not yet in force).

7 For these purposes, 'legal or other representative', in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or a prosecuting officer appointed under the Army Act 1955 s 83C (as added) or the Air Force Act 1955 s 83C (as added) (see para 315 ante), as the case may be: Armed Forces Act 2001 s 27(3) (not yet in force).

8 I.e. any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative, or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay: ibid s 27(3) (not yet in force).

9 Ibid s 27(1)(a) (not yet in force). The regulations must provide that a legal or other representative against whom action is taken by a court-martial under these powers may appeal to the Courts-Martial Appeal Court: s 27(2)(a) (not yet in force). 'Regulations' means regulations made by the Secretary of State: s 27(3) (not yet in force).

UPDATE**480-519 [Court Martial]**

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

513 Costs

TEXT AND NOTES--See the Armed Forces (Proceedings) (Costs) Regulations 2009, SI 2009/993.

TEXT AND NOTES 1-6--Armed Forces Act 2001 s 26(1)-(3) amended: Armed Forces Act 2006 Sch 16 para 192.

TEXT AND NOTE 1--Day now appointed: SI 2005/2861.

NOTE 3--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

NOTE 5--Armed Forces Act 2001 s 28(1), (2) amended, s 28(3) repealed: Armed Forces Act 2006 Sch 16 para 194, Sch 17.

TEXT AND NOTES 7-9--Armed Forces Act 2001 s 27(1), (2) amended: Armed Forces Act 2006 Sch 16 para 193(2), (3).

NOTE 7--Definition of 'legal or other representative' amended: Armed Forces Act 2006 Sch 16 para 193(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(vi) Treatment of Sentences/514. Suspension, postponement, commencement and duration of sentences.

(vi) Treatment of Sentences

514. Suspension, postponement, commencement and duration of sentences.

Where a court-martial passes a sentence of imprisonment or detention on a warrant officer, non-commissioned officer, soldier or airman it may by order suspend the sentence¹. A court-martial may also order that any sentence it passes should not have effect until the end of a specified period², and the Courts-Martial Appeals Court, where it dismisses an application for leave to appeal which it considers to have been frivolous or vexatious, may order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal must begin to run from the day on which the application is dismissed³. Subject to this, a military or air force sentence of imprisonment or detention awarded by a court-martial generally begins to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender⁴.

The commencement of a sentence of detention awarded by a commanding officer⁵ is dependent upon whether the offender avails himself of the right of appeal to the summary appeal court⁶. Such an offender has 14 days (or such longer period as the court may allow) to bring an appeal⁷, and, unless he elects for his sentence to begin to run from the day on which it is awarded⁸, it is suspended until the end of the appeal period⁹ or, where an appeal is brought within that period, until the determination of that appeal¹⁰.

Provision is also made in connection with the commencement of consecutive or additional sentences of imprisonment or detention¹¹.

The duration of a sentence of imprisonment or detention is subject to special provisions where the convicted person is unlawfully at large¹² or has been temporarily released on compassionate grounds¹³.

1 Army Act 1955 s 120(1), (2) (s 120(2) amended by the Armed Forces Act 1996 s 35(1), Sch 6 para 4(1)(a)); Air Force Act 1955 s 120(1), (2) (s 120(2) amended by the Armed Forces Act 1996 Sch 6 para 4(1)(a)). A sentence may also be suspended by the reviewing authority: see para 512 ante. Provision has also been made under which the Secretary of State may by order empower courts-martial to pass suspended and partly suspended sentences of imprisonment on civilians subject to military or air force law (see the Criminal Justice Act 1988 s 50 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 103)), but at the date at which this volume states the law this power had not been exercised. As to the Secretary of State see para 2 ante. As to the civilians who are subject to military or air force law see para 307 et seq ante.

If during suspension of the sentence the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence, then unless the balance of the earlier sentence is remitted under the Army Act 1955 s 119A(3) (as added) or the Air Force Act 1955 s 119A(3) (as added) (see para 441 ante), the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and must then direct whether the two sentences are to run concurrently or consecutively: Army Act 1955 s 120(5)(a); Air Force Act 1955 s 120(5)(a) (both amended by the Armed Forces Act 1971 s 43, Sch 1 para 1(1), (6)). If the court-martial does not exercise these powers, a reviewing authority may do so on reviewing the later sentence: Army Act 1955 s 120(5)(c); Air Force Act 1955 s 120(5)(c) (both amended by the Armed Forces Act 1996 Sch 6 para 4(1)(c)). In either case, where the powers are exercised any power of suspension or remission exercisable in relation to the later sentence is exercisable also in relation to the earlier: Army Act 1955 s 120(5)(d); Air Force Act 1955 s 120(5)(d) (both amended by the Armed Forces Act 1996 s 35(2) Sch 7 Pt II). Any order directing that the suspension of an earlier sentence must be determined is not affected by the later sentence being quashed: Army Act 1955 s 120(6); Air Force Act 1955 s 120(6) (both amended by the Armed Forces Act 1996 s 35(2) Sch 7 Pt II).

Where the sentence of a person in custody is suspended he must thereupon be released: Army Act 1955 s 120(7); Air Force Act 1955 s 120(7). Suspension may be determined, without prejudice to the possibility of subsequent suspension, on the review of the sentence by an order of the authority which committed the person sentenced to imprisonment or detention: Army Act 1955 s 120(4); Air Force Act 1955 s 120(4) (both amended by the Armed Forces Act 1986 s 16(2), Sch 2). A suspended sentence is automatically remitted at the expiry of one year from the date on which the suspension took effect, unless the suspension has been sooner determined: Army Act 1955 s 120(7); Air Force Act 1955 s 120(7) (both amended by the Armed Forces Act 1971 s 54(2)).

A sentence of imprisonment or detention passed by a court-martial on a warrant officer, non-commissioned officer, soldier or airman which is suspended in pursuance of the Army Act 1955 s 120 (as amended) or the Air Force Act 1955 s 120 (as amended) before he has been committed to prison or a military or air force establishment cannot begin to run until the beginning of the day on which the suspension is determined: Army Act 1955 s 118(2); Air Force Act 1955 s 118(2). This is subject to the proviso that where the sentence is suspended by a court-martial and the reviewing authority determines the suspension, the reviewing authority may direct the sentence to run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the reviewing authority may specify: Army Act 1955 s 118(2) proviso; Air Force Act 1955 s 118(2) proviso (both amended by the Armed Forces Act 1996 Sch 6 para 4(2)). 'Military establishment' means a military prison or any other establishment under the control of the Secretary of State where persons may be required to serve military sentences of imprisonment or detention (Army Act 1955 s 143(1)); 'air force establishment' means an air force prison or any other establishment under the control of the Secretary of State where persons may be required to serve air force sentences of imprisonment or detention (Air Force Act 1955 s 143(1)); and for these purposes one includes the other (Army Act 1955 s 130(1), (2); Air Force Act 1955 s 130(1), (2)). 'Military prison' means separate premises under the control of the Secretary of State and primarily allocated for persons serving military sentences of imprisonment (Army Act 1955 s 143(1)); 'air force prison' means separate premises under the control of the Secretary of State and primarily allocated for persons serving air force sentences of imprisonment (Army Act 1955 s 143(1)). References to a military or air force sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial (Army Act 1955 s 143(1); Air Force Act 1955 s 143(1)); and references to a military or air force sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer (Army Act 1955 s 143(1); Air Force Act 1955 s 143(1)).

Where a warrant officer, non-commissioned officer, soldier or airman has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of the Army Act 1955 s 120 (as amended) or the Air Force Act 1955 s 120 (as amended) after he has been committed to prison or a military or air force establishment, the currency of the sentence is suspended from the beginning of the day after the day on which he is released in accordance with the Army Act 1955 s 120 (as amended) or the Air Force Act 1955 s 120 (as amended) until the beginning of the day on which the suspension is determined: Army Act 1955 s 119(1); Air Force Act 1955 s 119(1) (both amended by the Armed Forces Act 1971 Sch 1 para 1(1), (5)).

2 Army Act 1955 s 120A(1) (s 120A added by the Armed Forces Act 1996 s 9(1)); Air Force Act 1955 s 120A(1) (s 120A added by the Armed Forces Act 1996 s 9(1)). A sentence may also be postponed by the reviewing authority: see para 512 ante. The Defence Council or any officer authorised by it may terminate the period specified in an order for postponement or extend such a period for a further period specified by it (Army Act 1955 s 120A(4); Air Force Act 1955 s 120A(4) (both as so added)), on the termination of which the sentence in respect of which the order in question was made must have or (as the case may be) resume effect (Army Act 1955 s 120A(5); Air Force Act 1955 s 120A(5) (both as so added)).

3 Courts-Martial (Appeals) Act 1968 s 11(2). As to applications for leave to appeal see para 533 post.

4 Army Act 1955 ss 118(1), 120A(6) (s 118(1) amended by the Armed Forces Act 1971 ss 43, 77(1), Sch 1 para 1(1), (4), Sch 4 Pt I; by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; and by the Armed Forces Discipline Act 2000 ss 25, 27, Sch 3 para 8, Sch 4; Army Act 1955 s 120A(6) (as added (see note 2 supra)); Air Force Act 1955 s 118(1), 120A(6) (s 118(1) amended by the Armed Forces Act 1971 Sch 1 para 1(1), (4), Sch 4 Pt I; by the Courts-Martial (Appeals) Act 1968 Sch 4; and by the Armed Forces Discipline Act 2000 Sch 3 para 8, Sch 4; Air Force Act 1955 s 120A(6) as added (see note 2 supra)).

5 For the meaning of 'commanding officer' see para 353 note 4 ante. For the power of a commanding officer to award sentences of detention see para 357 ante.

6 See the Army Act 1955 s 118ZA (added by the Armed Forces Discipline Act 2000 Sch 3 para 9); and the Air Force Act 1955 s 118ZA (added by the Armed Forces Discipline Act 2000 Sch 3 para 9). See the text and notes 8-11 infra. As to appeals to the summary appeal court see para 365 et seq ante.

7 See the Army Act 1955 s 83ZE(2); the Air Force Act 1955 s 83ZE(2) (both as added); and para 366 post.

8 See the Army Act 1955 s 118ZA(1), (2); the Air Force Act 1955 s 118ZA(1), (2) (both as added: see note 6 supra).

9 le the period within which an appeal may be brought under the Army Act 1955 s 83ZE(2) (as added) or the Air Force Act 1955 s 83ZE(2) (as added): see the text and note 7 supra: Army Act 1955 s 118ZA(5); Air Force Act 1955 s 118ZA(5) (both as added: see note 6 supra).

10 Army Act 1955 s 118ZA(1), (3); Air Force Act 1955 s 118ZA(1), (3) (both as added: see note 6 supra). Where an appeal is brought within the appeal period by an offender who has made an election which has not been withdrawn, or is brought after the end of the appeal period by any offender, the remainder of the sentence is suspended until the determination of the appeal: Army Act 1955 s 118ZA(1), (4); Air Force Act 1955 s 118ZA(1), (4) (both as so added). If during the appeal period an election is withdrawn, the remainder of the offender's sentence is suspended until the end of the appeal period or, where an appeal is brought within that period, until the determination of that appeal: Army Act 1955 s 118ZA(1), (3); Air Force Act 1955 s 118ZA(1), (3) (both as so added).

11 See the Army Act 1955 s 118A (as added and amended); the Air Force Act 1955 s 118A (as added and amended); and para 440 ante. As to the limitation on the total period for which an offender can be kept continuously in detention see para 441 ante.

12 See para 516 post.

13 See para 517 post.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

514 Suspension, postponement, commencement and duration of sentences

TEXT AND NOTES--As to suspended sentences and the activation of such sentences by the Court Martial and commanding officers see now the Armed Forces Act 2006 ss 190-195. As to the commencement of sentences of the Court Martial see s 289.

As to the remission of certain sentences on the passing of a custodial sentence, see the Armed Forces Act 2006 s 302.

NOTE 1--Criminal Justice Act 1988 s 50 repealed: Armed Forces Act 2006 Sch 16 para 112, Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(vi) Treatment of Sentences/515. Imprisonment and detention rules.

515. Imprisonment and detention rules.

The Secretary of State¹ may make rules governing the carrying out of sentences of imprisonment and detention². Rules may not authorise the infliction of corporal punishment³, but may make provision with respect to any or all of:

- 553 (1) the places in which, and the establishments or forms of custody (whether military, air force or not) in which, persons may be required to serve the whole or any part of military or air force sentences of imprisonment and detention passed on them⁴;
- 554 (2) the committal of persons under military or air force sentences of imprisonment or detention to the appropriate establishment or form of custody; their removal from one country or place to another and from one establishment or form of custody to another; and their release at the end of any terms of imprisonment or detention⁵;
- 555 (3) the provision, classification, regulation and management of military and air force establishments⁶;
- 556 (4) the classification, treatment, employment, discipline and control of persons serving military or air force sentences of imprisonment or detention in military or air force establishments or otherwise in military or air force custody⁷;
- 557 (5) the temporary release on compassionate grounds of persons serving military or air force sentences of imprisonment or detention in military or air force establishments or otherwise in military or air force custody; the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody; and the remission of part of any such sentence⁸;
- 558 (6) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of military and air force establishments⁹.

Rules made in pursuance of these provisions apply with modifications to imprisonment or detention in military corrective training centres¹⁰ and to unit detention rooms¹¹.

1 As to the Secretary of State see para 2 ante.

2 Army Act 1955 s 122(1); Air Force Act 1955 s 122(1) (both amended by the Armed Forces Act 1991 s 26, Sch 3). Rules may contain such incidental and supplementary provisions as appear requisite to the Secretary of State (Army Act 1955 s 123(1); Air Force Act 1955 s 123(1) (both amended by the Armed Forces Act 2001 s 38, Sch 7 para 4)), and must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (Army Act 1955 s 123(2); Air Force Act 1955 s 123(2) (both amended by the Armed Forces Act 2001 Sch 7 para 4)). Rules may also apply, with necessary modifications, all or any of the provisions of the Prison Act 1952 ss 39-42 (as amended) (which are concerned with the commission of offences by non-prisoners): Army Act 1955 s 122(3); Air Force Act 1955 s 122(3). See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 109 (as amended), Sch 4; the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005 r 109 (as amended), Sch 4; and PRISONS vol 36(2) (Reissue) para 604. Rules may also be made so as to apply to persons detained in a military or (as the case may be) air force establishment while serving sentences of imprisonment or detention awarded under one of the other service discipline Acts, notwithstanding that such persons are not for the time being subject to military or, as the case may be, air force law: Army Act 1955 s 122(4); Air Force Act 1955 s 122(4). As to the service discipline Acts see para 302 ante.

As respects any area in which persons subject to military or air force law are on active service, the Secretary of State may delegate his power to make imprisonment and detention rules to the officer commanding the

command within which those persons are serving, subject to such restrictions, reservations, exceptions and conditions as the Secretary of State thinks fit: Army Act 1955 s 122(5); Air Force Act 1955 s 122(5).

The power to make rules also applies in connection with sentences served outside the United Kingdom: see para 518 post.

As to the rules made see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 (as amended); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005 (as amended).

3 Army Act 1955 s 122(2); Air Force Act 1955 s 122(2).

4 Army Act 1955 s 122(1)(a); Air Force Act 1955 s 122(1)(a). See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 7-9, 11-19, (r 13 amended by SI 1983/1853; Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 18 amended by SI 1983/1853; SI 1991/826; Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 19 amended by SI 1991/826) and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 7-9, 11-19, (r 13 amended by SI 1983/1854; Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 18 amended by SI 1983/1854; SI 1991/825; Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 19 amended by SI 1991/825). For the meanings of 'military sentence of imprisonment', 'military sentence of detention', 'air force sentence of imprisonment' and 'air force sentence of detention' see para 514 note 1 ante.

Provision is made for the serving of military or air force sentences in civil prisons in the United Kingdom: see the Army Act 1955 ss 125(1), 129 (both as amended); the Air Force Act 1955 ss 125(1), 129 (both as amended); and PRISONS vol 36(2) (Reissue) para 638.

5 Army Act 1955 s 122(1)(b); Air Force Act 1955 s 122(1)(b). See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 rr 20-27, Sch 1 (r 21 amended by SI 1991/826; Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 22-24, 26, 27, Sch 1 amended, r 25 substituted, by SI 1983/1853); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005 rr 20-27 (r 21 amended by SI 1991/825; Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 22-24, 26, 27, Sch 1 amended, r 25 substituted, by SI 1983/1854)).

6 Army Act 1955 s 122(1)(c); Air Force Act 1955 s 122(1)(c). For the meanings of 'military establishment' and 'air force establishment' see para 514 note 1 ante.

7 Army Act 1955 s 122(1)(d); Air Force Act 1955 s 122(1)(d). See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 51-87, 89-97, Schs 2, 3 (rr 68, 75, 95 amended by SI 1983/1853; Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 77 amended by SI 1980/723; Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 81 amended by SI 1991/826; SI 1991/1853); the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 101-106 (religious instruction, education and welfare); rr 107-108 (prohibition on introduction of outside articles); r 110 (admission of visitors); r 114 (prisoners' earnings); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 51-87, 89-97, Schs 2, 3 (rr 68, 75 amended by SI 1983/1854; Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 81 amended by SI 1983/1854; SI 1991/825)); the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 101-106 (religious instruction, education and welfare), rr 107-108 (prohibition on introduction of outside articles); r 110 (admission of visitors); r 114 (prisoners' earnings).

8 Army Act 1955 s 122(1)(e); Air Force Act 1955 s 122(1)(e) (both amended by the Armed Forces Act 1996 s 35(1), (2), Sch 6 para 5, Sch 7 Pt III). As to release on compassionate grounds see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 26; the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 26; and para 517 post. As to remission see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 28-32 (as amended); the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 28-32 (as amended); and para 512 ante.

9 Army Act 1955 s 122(1)(f); Air Force Act 1955 s 122(1)(f). See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 4-6 (Pt II), rr 43-47, 49-50 (Pt VI) (r 47 substituted (for rr 47, 48) by SI 1980/723); the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 88, 110, 111-113 (Pt XI); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 4-6 (Pt II); rr 43-50 (Pt VI); rr 88, 110, 111-113 (Pt XI).

10 See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 33-42; and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 33-42.

11 See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, rr 10, 98-100; and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, rr 10, 98-100.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

515 Imprisonment and detention rules

TEXT AND NOTES--As to the power of the Secretary of State to make rules about service custody and the service of relevant sentences, see now the Armed Forces Act 2006 s 300. As to the rules so made see the Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096. SI 1979/1456, SI 1980/2005 revoked: SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(vi) Treatment of Sentences/516. Persons unlawfully at large.

516. Persons unlawfully at large.

Where any person serving a military or air force sentence of imprisonment or detention¹ becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account may be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into naval, military or air force custody or the custody of a civil authority² or (not having been taken into such custody) he returns to the place in which he was imprisoned or detained before he became unlawfully at large³.

A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law⁴, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence is deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law⁵.

1 For the meanings of 'military sentence of imprisonment', 'military sentence of detention', 'air force sentence of imprisonment' and 'air force sentence of detention' see para 514 note 1 ante.

2 For these purposes, 'civil authority' means a civil authority (whether of the United Kingdom or of any country or territory outside the United Kingdom) authorised by law to detain persons, and includes a constable: Army Act 1955 s 119(3); Air Force Act 1955 s 119(3). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

3 Army Act 1955 s 119(2); Air Force Act 1955 s 119(2). This is subject to the proviso that if the offender satisfies such authority as may be specified (see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 81 (as amended); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 81 (as amended)) that during any time during the period of his absence he was either in the custody of a civil authority or, if and in so far as authorised, in the custody of any military, naval or air force authority of any country or territory outside the United Kingdom (see the Army Act 1955 s 126 (as amended); the Air Force Act 1955 s 126 (as amended); and para 518 post), the time elapsing during the period beginning with the day on which he became at large and ending with the day on which he was taken into custody is not disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence: Army Act 1955 s 119(2) proviso; Air Force Act 1955 s 119(2) proviso. As to the making of imprisonment and detention rules see para 515 ante.

4 For these purposes, references to release or recall under civil law are references to release or recall in pursuance of rules made under the Prison Act 1952 s 47(5) (see PRISONS vol 36(2) (Reissue) paras 502, 612) or (in the case of a person serving his sentence outside the United Kingdom) in pursuance of any corresponding provision of the law of the country or territory in which he is serving his sentence: Army Act 1955 s 119(7); Air Force Act 1955 s 119(7).

5 Army Act 1955 s 119(6); Air Force Act 1955 s 119(6).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by

Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

516 Persons unlawfully at large

TEXT AND NOTES--As to duration of sentences where persons are unlawfully at large, see now the Armed Forces Act 2006 s 301.

NOTE 3--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(vi) Treatment of Sentences/517. Persons temporarily released on compassionate grounds.

517. Persons temporarily released on compassionate grounds.

Provision is made for the temporary release on compassionate grounds of a soldier or airman under sentence where it is considered that his presence is desirable in the event of the death or dangerous illness of a near relative, the birth of a child, an occurrence of damage to his family residence or an occurrence of domestic difficulties concerning him or his family, or where he is to marry a pregnant woman¹. In calculating the period for which a person temporarily released in accordance with these provisions is liable to be imprisoned or detained in pursuance of the sentence, no account may be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody².

1 See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 26(1), (2) (r 26(2) amended by SI 1983/1853); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 26(1), (2) (r 26(2) amended by SI 1983/1854). Release is subject to conditions: see the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 26(3); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 26(3). As to the making of imprisonment and detention rules see para 515 ante.

2 Army Act 1955 s 119(4); Air Force Act 1955 s 119(4). This is without prejudice to the statutory provisions concerning persons unlawfully at large (ie the Army Act 1955 s 119(2); and the Air Force Act 1955 s 119(2): see para 516 ante), and where a person who for any period is released on compassionate grounds (or who is otherwise allowed out of any military establishment or otherwise out of military custody for any period or subject to any condition) must, on failure to return at the expiration of the period or to comply with the condition, be treated for those purposes as being unlawfully at large: Army Act 1955 s 119(5); Air Force Act 1955 s 119(5). The period of temporary release does not count as part of the sentence: Imprisonment and Detention (Army) Rules 1979, SI 1979/1456, r 26(4); Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005, r 26(4).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

517 Persons temporarily released on compassionate grounds

NOTES--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

TEXT AND NOTE 2--As to duration of sentences where persons are on temporary release, see now the Armed Forces Act 2006 s 301.

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518. Service of sentences outside United Kingdom.

The Secretary of State¹ may from time to time make arrangements with the authorities of any country or territory outside the United Kingdom² whereby military or air force sentences of imprisonment or detention³ may, in accordance with imprisonment and detention rules⁴, be served wholly or partly in establishments under the control of those authorities⁵.

A person who is serving a military or air force sentence of imprisonment or detention in the United Kingdom may (in so far as may be specified by or under imprisonment and detention rules) be removed out of the United Kingdom to any colony in which he was enlisted or to any place out of the United Kingdom where the corps or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place⁶.

1 As to the Secretary of State see para 2 ante.

2 As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

3 For the meanings of 'military sentence of imprisonment', 'military sentence of detention', 'air force sentence of imprisonment' and 'air force sentence of detention' see para 514 note 1 ante.

4 I.e. the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 (as amended); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005 (as amended): see para 515 ante.

5 Army Act 1955 s 126(1); Air Force Act 1955 s 126(1) (both amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 para 18(1), (2), Sch 7 Pt 4). The powers conferred on the Secretary of State in connection with the making of rules (i.e. by the Army Act 1955 s 122 (as amended) and the Air Force Act 1955 s 122 (as amended) (see para 515 ante)) extend to the making of such provision as appears to the Secretary of State necessary or expedient for giving effect to any arrangements so made (Army Act 1955 s 126(2); Air Force Act 1955 s 126(2) (both amended by the Armed Forces Act 2001 Sch 6 para 18(1), (3))), and must be so exercised as to secure that no military sentence of imprisonment or detention is served, in an establishment in any country or territory outside the United Kingdom not being a military or air force establishment, except in accordance with arrangements made as respects that country or territory (Army Act 1955 ss 126(3), 130(4); Air Force Act 1955 ss 126(3), 130(4) (Army Act 1955 s 126(3) and the Air Force Act 1955 s 126(3) amended by the Armed Forces Act 2001 Sch 6 para 18(1), (4), Sch 7 Pt 4)). For the meanings of 'military establishment' and 'air force establishment' see para 514 note 1 ante.

6 Army Act 1955 s 127(1); Air Force Act 1955 s 127(1). As to the meaning of 'colony' see para 20 note 4 ante.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

518 Service of sentences outside United Kingdom

NOTE 4--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(vi) Treatment of Sentences/519. Sentences of detention not to be served in military or air force prisons.

519. Sentences of detention not to be served in military or air force prisons.

A person may not be required to serve any part of a military or air force sentence of detention¹ in a military prison², air force prison³ or civil prison⁴, except that in such cases and subject to such conditions as may be specified by or under imprisonment and detention rules⁵ a person serving such a sentence may be temporarily detained in a military, air force or civil prison for any period not exceeding seven days⁶.

1 For the meanings of 'military sentence of detention' 'and 'air force sentence of detention' see para 514 note 1 ante.

2 For the meaning of 'military prison' see para 514 note 1 ante.

3 For the meaning of 'air force prison' see para 514 note 1 ante.

4 Army Act 1955 ss 124, 130(3); Air Force Act 1955 s 124, 130(3). 'Civil prison' means a prison in the United Kingdom in which a person sentenced by a civil court to imprisonment can for the time being be confined: Army Act 1955 s 143(1); Air Force Act 1955 s 143(1). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

5 Ie the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 (as amended); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005 (as amended): see para 515 ante.

6 Army Act 1955 ss 124, 130(3); Air Force Act 1955 s 124, 130(3).

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

519 Sentences of detention not to be served in military or air force prisons

TEXT AND NOTES--See now the Armed Forces Act 2006 s 296.

NOTE 5--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (5) ARMY AND AIR FORCE COURTS-MARTIAL/(vi) Treatment of Sentences/519A. Trial by Court Martial.

519A. Trial by Court Martial.

1. The Court Martial

There is to be a court, to be known as the Court Martial: Armed Forces Act 2006 s 154(1). The Court Martial may sit in any place, whether within or outside the United Kingdom: s 154(2).

In the case of any proceedings, the Court Martial is to consist of a judge advocate, and at least three but not more than five other persons ('lay members'): s 155(1). But Court Martial rules may provide that, in the case of proceedings of a prescribed description, there are to be at least five but not more than seven lay members, or no lay members: s 155(1). See the Armed Forces (Court Martial) Rules 2009, SI 2009/2041, r 27 (proceedings without lay members), and r 29 (proceedings requiring at least five lay members). In the case of proceedings where the Court Martial consists of a judge advocate and lay members a prescribed number (see SI 2009/2041 r 31) of the lay members must be officers or warrant officers qualified for membership under the Armed Forces Act 2006 s 156 and not ineligible by virtue of s 157, and the rest must be officers so qualified and not so ineligible: s 155(3). Section 155(3) is subject to any provision made by Court Martial rules: s 155(4). The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General: s 155(5). The lay members for any proceedings are to be specified by or on behalf of the court administration officer: s 155(6). The number of lay members specified under s 155(6) is to be the minimum required unless a judge advocate, in accordance with Court Martial rules (see SI 2009/2041 r 30), directs otherwise: Armed Forces Act 2006 s 155(7). For these purposes 'the minimum required' means the minimum required by s 155(1), or, where rules made by virtue of s 155(2) apply instead of s 155(1), the minimum required by those rules: s 155(8). 'Prescribed' means prescribed by Court Martial rules: s 155(9). 'Judge advocate' means (1) the Judge Advocate General; (2) a person appointed under the Courts-Martial (Appeals) Act 1951 s 30(1)(a) or (b) or (2) (assistants to the Judge Advocate General) (see PARA 446); or (3) a puisne judge of the High Court in England and Wales who (following a request by the Judge Advocate General) is nominated by or on behalf of the Lord Chief Justice of England and Wales to sit as a judge advocate: Armed Forces Act 2006 s 362.

An officer or warrant officer is generally qualified for membership of the Court Martial: see s 156. However, in particular circumstances, officers and warrant officer are ineligible: see s 157. Court Martial rules may also provide that an officer or warrant officer of a description prescribed by the rules is ineligible for membership of the Court Martial for a description of proceedings so prescribed: s 157(4). See SI 2009/2041 r 32 (persons ineligible for membership in particular circumstances). As to when the lay members are to be civilians, see r 33; and as to who may be the president of the board, see r 34. See also r 35 (objections to lay members), r 36 (waiting members), r 37 (swearing of lay members) and r 38 (judge advocate's power to direct lay members to withdraw).

There is to be a court administration officer for the Court Martial who is to be appointed by the Defence Council (see PARA 2): see Armed Forces Act 2006 s 363. The court administration officer must exercise his functions (other than that of specifying the lay members for any proceedings) subject to any direction given by the judge advocate: SI 2009/2041 r 15(1). The court administration officer may delegate any of his functions to a member of the Military Court Service: r 15(2).

2. Service of documents

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 2 (rr 4-14) makes provision with regard to the service of documents on different people and sets out when service is deemed to have occurred depending on the method of service.

3. Court Martial Proceedings

Subject to any provision made by Court Martial rules, the Court Martial must sit in open court: Armed Forces Act 2006 s 158. As to restrictions on public access and reporting see the Armed Forces (Court Martial) Rules 2009, SI 2009/2041, rr 152-154.

In the case of proceedings where the Court Martial consists of a judge advocate and other persons, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate: Armed Forces Act 2006 s 159(1). Any rulings or directions given under s 159(1) are binding on the court: s 159(2).

Subject to the following provisions, the finding of the Court Martial on a charge, and any sentence passed by it, must be determined by a majority of the votes of the members of the court: s 160(1). The judge advocate is not entitled to vote on the finding: s 160(2). In the case of an equality of votes on the finding, the court must acquit the defendant: s 160(3). In the case of an equality of votes on the sentence, the judge advocate has a casting vote: s 160(4).

Where the Court Martial acquits a person of an offence specifically charged in the charge sheet, but the allegations in the charge sheet amount to or include (expressly or by implication) an allegation of another service offence, the court may convict him of that other offence: s 161(1). For the meaning of 'service offence' see PARA 451. For the purposes of s 161(1) an allegation of an offence to which s 39(1) (see PARA 420) applies (offence X) is to be taken as including an allegation of an offence under that provision of attempting to commit offence X; and an allegation of a completed s 42 offence (see PARA 422) is to be taken as including an allegation of a s 42 offence of attempt: s 161(2). Section 161(1) applies in relation to a charge sheet containing more than one charge as if each charge were contained in a separate charge sheet: s 161(3). For these purposes 'a completed s 42 offence' means an offence that, by virtue of the Criminal Attempts Act 1981 s 1(4) as modified by the Armed Forces Act 2006 s 43 (see PARA 422), is an offence to which the Criminal Attempts Act 1981 s 1 applies; and 'a s 42 offence of attempt' has the meaning given by the Armed Forces Act 2006 s 44(2) (see PARA 422): s 161(4).

A witness before the Court Martial or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales: s 162.

The Secretary of State may by rules (referred to as 'Court Martial rules') make provision with respect to the Court Martial: s 163(1). Court Martial rules may in particular make provision with respect to (1) sittings of the court, including the place of sitting and changes to the place of sitting; (2) trials and other proceedings of the court; (3) the practice and procedure of the court; (4) evidence, including the admissibility of evidence; (5) the representation of the defendant; and (6) appeals from the Service Civilian Court: s 163(2). Without prejudice to the generality of s 163(1), (2), Court Martial rules may make provision:

- 559 (a) as to oaths and affirmations for members of the court, witnesses and other persons (see SI 2009/2041 r 21, Sch 1 (oaths and affirmations), r 37 (swearing of lay members), r 74 (oral testimony to be given on oath));
- 560 (b) as to objections to, and the replacement of, members of the court (see r 35 (objections to lay members), r 36 (waiting members));
- 561 (c) as to the constitution of the court (see Pt 4 (rr 27-38) (members of the court));

- 562 (d) for such powers of the court as may be prescribed by the rules to be exercised by a judge advocate (see r 28 (powers that may be exercised by a judge advocate), r 38 (judge advocate's power to direct lay members to withdraw), r 49 (powers of judge advocate in preliminary proceedings));
- 563 (e) for procuring the attendance of witnesses and other persons and the production of documents and other things, including provision about (i) the payment of expenses to persons summoned to attend the court; and (ii) the issue by the court of warrants for the arrest of persons (see Pt 11 (rr 62-71) (attendance of witnesses));
- 564 (f) as to the amendment of charges (see Pt 9 (rr 51-55) (joinder, severance and amendment));
- 565 (g) for the taking into consideration, when sentencing an offender, of any other service offence committed by him (see r 115 (offences taken into consideration));
- 566 (h) for the variation by the court of a sentence passed by it or the variation or rescission by it of an order made by it (see Pt 15 (rr 118-124) (variation proceedings));
- 567 (i) for appeals (i) against any orders (including directions) of the court prohibiting or restricting the publication of any matter or excluding the public from any proceedings (whether made in preliminary proceedings or otherwise); (ii) against any other orders or rulings made in proceedings preliminary to a trial (see r 50 (appeals));
- 568 (j) for the discharge of a court (including provision as to retrials and rehearings following discharge) (see r 25 (termination of proceedings));
- 569 (k) for the powers conferred by the Bankers' Books Evidence Act 1879 s 7 (orders for the inspection of bankers' books for the purposes of legal proceedings) to be exercisable by a judge advocate as well as by the court or a judge (see SI 2009/2041 r 71 (order for inspection of banker's books));
- 570 (l) for the making and retention of records of the proceedings of the court (see r 23 (record of proceedings));
- 571 (m) for the supply of copies of such records, including provision about the fees payable for the supply of such copies (see r 23);
- 572 (n) conferring functions in relation to the court on the court administration officer and for the delegation by the court administration officer of any of his functions in relation to the court (see r 25): Armed Forces Act 2006 s 163(3).

Provision that may be made by the rules by virtue of s 163(2)(d) (see head (4)) includes provision applying, with or without modifications, any enactment (whenever passed) creating an offence in respect of statements admitted in evidence: s 163(4). Provision that may be made by the rules by virtue of s 163(3)(e)(ii) (see head (e)(ii)) includes provision conferring powers of arrest, requiring any arrested person to be brought before the court, authorising the keeping of persons in service custody, and the imposition of requirements on release from service custody (including provision applying s 107(5) and (6) with or without modifications): s 163(5). Court Martial rules must secure that, after arraignment, charges may not be amended in circumstances substantially different from those in which indictments are amendable by the Crown Court, or otherwise than subject to conditions which correspond, as nearly as circumstances permit, to those subject to which indictments are so amendable: s 163(6). Rules made by virtue of s 163(3)(h) (see head (h)) may make provision about the commencement of sentences or orders varied by the court (including provision conferring on the court a power to direct that a sentence is to take effect otherwise than as mentioned in s 289(1)): s 163(7). Court Martial rules may apply, with or without modifications, any enactment or subordinate legislation (whenever passed or made), including any provision made by or under the Armed Forces Act 2006: s 163(8). Rules made by virtue of s 163(3)(i) (see head (i)) may confer jurisdiction on the Court Martial Appeal Court, and rules under the Court Martial Appeals Act

1968 s 49 may make provision about the powers of that court in relation to appeals made by virtue of the Armed Forces Act 2006 s 163(3)(i): s 163(9).

For further provision made by the Court Martial rules, see PARA 519A.4 et seq.

4. Administrative matters

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 3 (rr 15-26) deals with administrative matters including (1) listing and notification of proceedings (rr 16, 17); (2) providing that a judge advocate may direct attendance at court by live link (r 18); (3) providing for proceedings to be held in the absence of any person to whom they relate, if the judge advocate so directs (r 19); (4) deliberation in private (r 20); (5) oaths and affirmations (r 21); (6) the appointment of interpreters (r 22); (7) providing that a record must be made of any proceedings (r 23); (8) providing that any exhibit admitted in evidence must be marked sequentially with either a number or a letter, must be signed by or on behalf of the judge advocate, and must be retained with the record of proceedings, unless the judge advocate otherwise directs (r 24); (9) setting out the circumstances in which a judge advocate must terminate proceedings including when the president of the board for any proceedings dies (r 25); and (10) making provision for circumstances not provided for (r 26). As to the appointment of a court administration officer see PARA 519A.1.

5. Assistance and representation

A party to proceedings may appoint a legal representative to act for him in relation to the proceedings: Armed Forces (Court Martial) Rules 2009, SI 2009/2041, r 39(1). As to who may be a legal representative at court, see r 39(2). As to the rights of a defendant which may be exercised by a parent or guardian when the defendant is a young person who has not appointed a legal representative, see r 40.

6. Preliminary proceedings

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 8 (rr 45-50) makes provision with regard to preliminary hearings including (1) the listing of initial preliminary proceedings (see r 45); (2) the listing of further preliminary proceedings (see r 46); (3) the holding of preliminary proceedings in chambers without notice to the defendant (see r 47); (4) directions for an outline of the prosecution case to be served on each defendant and the court administration officer (see r 48); (5) the power of a judge advocate to make orders or rulings on matters such as the admissibility of evidence, joinder or severance of charges and other questions of law, practice or procedure (see r 49); and (6) appeals against any order or ruling made in preliminary proceedings (see r 50). 'Preliminary proceedings' means any proceedings of the court held for the purpose of arraigning a defendant on a charge or giving directions, orders or rulings for the purpose of trial proceedings: r 2(2). As to the arraignment of defendants and the ability of defendants to change their plea, see Pt 10 (rr 56-61).

7. Findings of unfitness to stand trial and insanity

The following provisions apply where on a trial by the Court Martial the question arises, at the instance of the defence or otherwise, whether the defendant is fit to stand trial: Armed Forces Act 2006 s 166(1). For these purposes a person is unfit to stand trial if he is under a disability such that apart from the Criminal Procedure (Insanity) Act 1964 it would constitute a bar to his being tried on indictment in England and Wales: Armed Forces Act 2006 s 166(2). Subject to s 166(5), (6), the question of fitness to stand trial must be determined as soon as it arises: s 166(3). The question of fitness to stand trial is to be determined by the judge advocate: s

166(4). If, having regard to the nature of the supposed disability, the judge advocate is of the opinion that it is expedient to do so and in the interests of the defendant, he may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence: s 166(5). If, before the question of fitness to stand trial falls to be determined, the court finds the defendant not guilty on the charge or each of the charges on which he is being tried, that question is not to be determined: s 166(6). A judge advocate may not make a determination under s 166(4) except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved within the meaning given by s 172: s 166(7). 'Duly approved' means approved for the purposes of the Mental Health Act 1983 s 12 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 482 et seq) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder: Armed Forces Act 2006 s 172(1). Subject to certain exceptions (see s 172(4)), a report written by a registered medical practitioner may be received in evidence without further proof of the signature or the professional qualifications of the author of the report: see s 172(2). The court may require the signatory of any such report to be called to give oral evidence: s 172(3).

Where a judge advocate has determined that a person is unfit to stand trial, the trial must not proceed further but the court must determine whether it is satisfied that the defendant did the act, or omission, which constitutes the offence with which he is charged; if the court determines that he did the act or omission, it must make a finding that he did the act or omission in respect of that charge, and if it determines that he did not do the act or omission, it must find him not guilty of that charge: see s 167. If on a trial by the Court Martial the court is satisfied that the defendant did the act charged against him, and that at the time of that act he was insane, then the court must find the defendant not guilty of that offence by reason of insanity: see s 168. When there is a finding of unfitness to stand trial or not guilty by reason of insanity, the judge advocate may (1) make a hospital order under the Mental Health Act 1983 s 37 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 491), with or without a restriction order under s 41 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 496); (2) make a service supervision order; or (3) order the person's absolute discharge: see the Armed Forces Act 2006 s 169. 'Service supervision order' means an order whereby the person in respect of whom it is made is subject to the supervision of a specified person (the 'supervising officer') for a specified period which must not exceed the maximum period for the time being specified in the Criminal Procedure (Insanity) Act 1964 Sch 1A para 1(1) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 368 et seq): see Armed Forces Act 2006 s 170. Further provision in relation to service supervision orders is made by the Armed Forces (Unfitness to Stand Trial and Insanity) Regulations 2009, SI 2009/1213.

The Secretary of State may remit for trial by the Court Martial a person who is the subject of a hospital order with a restriction order under the Armed Forces Act 2006 s 169 if, after having consulted the medical practitioner in charge of the person's treatment, he is satisfied that the person is no longer unfit to stand trial: see s 171.

8. Evidence

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, rr 72-77 make provision as to general evidential matters. As to evidence of bad character see r 78 (notice of intention to adduce evidence of a defendant's bad character), r 79 (application to exclude evidence of a defendant's bad character), and r 80 (application for leave to adduce evidence of the bad character of a non-defendant). As to hearsay evidence see r 81 (notice of intention to adduce hearsay evidence), and r 82 (counter-notice objecting to the admission of hearsay evidence). Evidence as to service matters such as evidence of enlistment and service records is made by rr 83-87. As to expert evidence see r 88, and as to special measures directions see rr 89-100.

9. Trial procedure

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 13 (rr 101-110) sets out the procedure to be followed at trial including (1) opening addresses (r 101); (2) examination of witnesses (r 102); (3) the presence of witnesses in court (r 103); (4) submissions of no case to answer (r 104); (5) opening addresses by the defence (r 105); (6) the case for the defence (r 106); (7) finding of not guilty before conclusion of the defence (r 106); (8) closing addresses (r 107); (9) summing up (r 108); (10) deliberation on findings (r 109); and (11) announcement of findings (r 110).

10. Sentencing and variation proceedings

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 14 (rr 111-117) deal with sentencing matters and procedure, including (1) disputes on facts after a plea of guilty (r 112); (2) pre-sentence reports and previous convictions (r 113); (3) information before sentencing (r 114); (4) offences taken into consideration (r 115); (5) mitigation of sentence (r 116); and (6) pronouncement of sentence (r 117). As to variation proceedings and the power to vary a sentence, see Pt 15 (rr 118-124). As to suspended sentences of service detention see the Armed Forces Act 2006 ss 190-195, and as to the commencement of sentences see s 289.

As to the issue of costs, see the Armed Forces (Proceedings) (Costs) Regulations 2009, SI 2009/993; and PARAS 475, 513.

11. Appellate proceedings

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 16 (rr 125-129) provides for procedural matters in relation to appeals including (1) notices of appeal (r 125); (2) applications for extension of the initial period for appeal (r 126); (3) applications for leave to appeal out of time (r 127); (4) how the rules are to apply to appellate proceedings (r 128); and (5) when the court may treat an appeal as abandoned (r 129).

12. Activation and ancillary proceedings

The Armed Forces (Court Martial) Rules 2009, SI 2009/2041, Pt 17 (rr 130-138) deals with activation proceedings of suspended sentences passed in relation to an earlier offence when a new offence has been committed during the operational period of that suspended sentence.

Part 18 Ch 1 (rr 139-144) applies when an overseas community order made by the court is in force and the offender has breached the terms of that order. Part 18 Ch 2 (rr 145-151) deals with other ancillary proceedings including reviewing a service compensation order (r 145), applying for time to pay a financial penalty (r 146), remission of fines (r 147), remission of a case by the Appeal Court for consideration of whether to make a service restraining order (r 148), variation or revocation of service restraining orders and orders for recognizance (rr 149, 150), and the procedure to be followed when the court decides to certify a person for contempt of court.

UPDATE

480-519 [Court Martial]

Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. The Armed Forces Act 2006 provides for the establishment of a standing court-martial, called the Court Martial, governing all members of the armed forces. As to trial by Court Martial see the Armed Forces Act 2006 Pt 7 (ss 154-174); the Armed Forces (Court Martial) Rules 2009, SI 2009/2041; and PARA 519A.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/520. Establishment and constitution of standing civilian courts.

(6) STANDING CIVILIAN COURTS

520. Establishment and constitution of standing civilian courts.

Standing civilian courts are courts established for the trial of civilians¹ for military or air force offences outside the United Kingdom². The Secretary of State³ may by order direct that any area specified in the order be an area for which trials may be directed to be held before standing civilian courts for offences committed within that area or elsewhere⁴; a standing civilian court may not, however, try a person for an offence committed within the United Kingdom⁵, although it may be directed to sit outside its area (but not within the United Kingdom) if the court administration officer⁶ thinks it expedient in the interests of justice⁷.

A trial in a standing civilian court must be held before a magistrate appointed as such by the Lord Chancellor from among the assistants to the Judge Advocate General⁸, but where the person to be tried (or every such person, where there are more than one) was under the age of 17 at the date of the alleged commission of the offence, there is provision for the magistrate to sit with not more than two assessors or members⁹.

1 The persons to whom the Army Act 1955 Pt II (ss 24-143) (as amended) or the Air Force Act 1955 Pt II (ss 24-143) (as amended) is applied by, as the case may be, the Army Act 1955 s 209 (as amended) or the Air Force Act 1955 s 209 (as amended) (see paras 311, 430 et seq ante), including persons to whom the Army Act 1955 Pt II (as amended) or the Air Force Act 1955 Pt II (as amended) applies by virtue of, as the case may be, the Army Act 1955 s 131 (as amended) or the Air Force Act 1955 s 131 (as amended) (which provide for the continuing treatment of persons as subject to those provisions for the purposes of trial and punishment of offences): Armed Forces Act 1976 s 6(1).

2 Armed Forces Act 1976 s 6(1), (2). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

3 As to the Secretary of State see para 2 ante.

4 Armed Forces Act 1976 s 6(3). The order must be approved by the Lord Chancellor and must be made by statutory instrument subject to annulment by resolution of either House of Parliament: Armed Forces Act 1976 s 6(3), (16). In pursuance of this power the Standing Civilian Courts (Areas) Order 1977, SI 1977/89 (amended by SI 1991/2788) has been made, designating two areas within which trials may be held before standing civilian courts: the Federal Republic of Germany, Belgium and the Netherlands (named Area 1), and the Republic of Cyprus and the sovereign base areas of Akrotiri and Dhekelia (Area 2). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

5 See the Armed Forces Act 1976 s 7(1); and para 521 post.

6 For these purposes, 'the court administration officer' has the same meaning as in the Army Act 1955 (see para 480 note 5 ante) and, in relation to a civilian, means the court administration officer notified by the prosecuting authority that the civilian is to be tried by the court and includes his successor or any person for the time being exercising his or his successor's functions: Armed Forces Act 1976 s 6(17), Sch 3 para 1(1) (amended by the Armed Forces Act 1996 s 35(1), Sch 6 para 103(1), (2)(a)). A court administration officer is charged with the duty of administering hearings before the standing civilian court: see the Standing Civilian Courts Order 1997, SI 1997/172, art 3. As to the prosecuting authority see para 488 note 2 ante.

7 See the Armed Forces Act 1976 Sch 3 para 2(3) (amended by the Armed Forces Act 1996 Sch 6 para 103(1), (3)(a)). Before giving such a direction, the court administration officer must consult the Judge Advocate General or his deputy: Armed Forces Act 1976 Sch 3 para 2(3). As to the Judge Advocate General and his assistants see paras 446-447 ante.

8 Ibid s 6(4), (5). The assistants referred to in the text are those appointed under the Courts-Martial (Appeals) Act 1951 s 30 (see para 446 ante), and the Lord Chancellor must appoint as many of them as he

thinks necessary to sit as magistrates in standing civilian courts: Armed Forces Act 1976 s 6(4). On appointment each magistrate is required to take an oath or make an affirmation: see the Standing Civilian Courts Order 1997, SI 1997/172, arts 29(1), 30, Sch 3. From among the magistrates so appointed, the magistrate for any sitting or succession of sittings of a standing civilian court must be specified by or on behalf of the Judge Advocate General: Armed Forces Act 1976 s 6(14).

9 See *ibid* s 6(12), (13). Thus the appointment of persons to sit with the magistrate as assessors or members of the courts is possible only when all those persons to be tried were under the age of 17 at the date when the offence is alleged to have been committed: see s 6(12), (13). Assessors have no vote at the trial on any question to be determined, and sit only as advisers to the magistrate on matters other than of law: Sch 3 paras 5, 9(1)(a). Persons whose names are included in the appropriate panel of members, when sitting with a magistrate, are actual members of the court (s 6(13)), and although the magistrate must preside and give rulings on matters of law (Sch 3 para 9(2)), all questions are decided by a majority of votes (Sch 3 para 9(1)(b)). In the event of an equality of votes on the finding the accused must be acquitted (Sch 3 para 9(3)), but on sentence the magistrate has a second or casting vote (Sch 3 para 9(4)). These differences of function between members and assessors doubtless explain the differences between the qualifications required of each category and in the mode of their appointment: to appoint assessors, the Secretary of State may direct such authority as he thinks appropriate in relation to an area for which trials may be held before standing civilian courts to draw up and maintain a panel of persons whom the authority thinks suitable to act as assessors (s 6(6)); when appointing members, however, the Secretary of State must be satisfied, after consultation with the Lord Chancellor, that there are sufficient persons suitably qualified by training and experience to sit as members of standing civilian courts before by order directing that in relation to such courts in the area in question a court for the trial of juveniles must consist of a magistrate and not more than two members of the panel (s 6(7), (13)) and the Secretary of State is required, with the approval of the Lord Chancellor, to draw up and maintain a panel of persons qualified to sit as members of standing civilian courts in that area (s 6(8)).

Each member of a panel either of assessors or members must be either a civilian (see note 1 *supra*) or an officer of the Royal Navy, the regular forces or the regular air force (including officers): s 6(9) (amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 para 25, Sch 7 Pt 6). For the meaning of 'regular forces' see para 191 *ante*; and for the meaning of 'regular air force' see para 206 *ante* (definitions applied by the Armed Forces Act 1996 s 6(9) (as so amended)). Any person placed on such a panel who ceases to be such a person, or ceases to reside in the area for which the panel is drawn up, ceases to be a member of that panel: s 6(10). Persons may be removed from such a panel, on the ground of incapacity or misbehaviour, by the Secretary of State; but a person may be removed from a panel of members only with the approval of the Lord Chancellor: s 6(11). Every person placed on a panel of assessors or members is required to take an oath on appointment: see the Standing Civilian Courts Order 1997, SI 1997/172, arts 29(2), 30, Sch 3.

For the trial before a standing civilian court of a juvenile, where a panel formed under the Armed Forces Act 1976 s 6(6) exists, not more than two persons on that panel may be appointed to sit with the magistrate as assessors, provided that s 6(13) (requiring the court for such a trial to consist of a magistrate and two members drawn from a panel drawn up under s 6(8)) is not in operation: s 6(12). Thus, even where assessors are available, their appointment is discretionary, and they may not be appointed for a trial in an area in which s 6(13) is in operation. The persons to sit as assessors or members for any trial or succession of trial must be specified by the court administration officer: s 6(15) (amended by the Armed Forces Act 1996 Sch 1 para 102).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 *et seq*.

520 Establishment and constitution of [Service Civilian Courts]

TEXT AND NOTES--Replaced. Armed Forces Act 1976 ss 6, 7, Sch 3, and Armed Forces Act 1996 s 6(2) repealed: Armed Forces Act 2006 Sch 17. There is to be a court, to be known as the Service Civilian Court: Armed Forces Act 2006 s 277(1). The Service Civilian Court may sit in any place other than in the British Islands: s 277(2). In any proceedings, the Service Civilian Court is to consist of a single judge advocate: s 278(1). The judge advocate for any proceedings is to be specified by or on behalf of the Judge Advocate General: s 278(2). For further provision as to the proceedings of the Service Civilian Court, see s 278(3), Sch 10.

See also Constitutional Reform Act 2005 Act s 19, Sch 7 para 4 (protected functions of the Lord Chancellor); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/521. Jurisdiction of standing civilian courts.

521. Jurisdiction of standing civilian courts.

The jurisdiction of standing civilian courts¹ is limited in that they may in general try only offences committed outside the United Kingdom² for which a court-martial may try a civilian³. Subject to this, however, standing civilian courts may also try certain offences amounting to contempt of courts-martial⁴ and any civil offence⁵ which a magistrates' court would be unable to try if the person charged were alleged to have committed it in England or Wales⁶.

A person subject to military or air force law⁷ is not liable to be tried by a standing civilian court in respect of any offence⁸:

- 573 (1) for which he has been tried by a competent civil court, wherever situated, or a standing civilian court⁹;
- 574 (2) which has been taken into consideration in the sentencing of that person by any such court¹⁰;
- 575 (3) in connection with which a charge against him under the service discipline Acts has been dismissed by his commanding officer or the appropriate superior authority¹¹;
- 576 (4) for which he has been charged under any of the service discipline Acts and had a finding that the charge has been proved recorded against him by his commanding officer or the appropriate superior authority¹²; or
- 577 (5) which has been condoned by his commanding officer (whether military, naval or air force¹³).

A number of statutory provisions governing the jurisdiction and procedure of courts-martial are applied, where necessary with modifications, to standing civilian courts¹⁴.

1 As to the establishment and constitution of standing civilian courts see para 520 ante.

2 Armed Forces Act 1976 s 7(1). As to the meaning of 'United Kingdom' see para 20 notes 1-2 ante.

3 Armed Forces Act 1976 s 7(1). For the meaning of 'civilian' see para 520 note 1 ante. As to the application of military or air force law to civilians see paras 311, 430 et seq ante.

4 Armed Forces Act 1976 s 7(1)(a). As to these offences see the Army Act 1955 s 57 (as amended); the Air Force Act 1955 s 57 (as amended); and para 411 ante. Such offences may be committed in relation to a standing civilian court as well as in relation to a court-martial: see para 411 ante.

5 Ie any offence under the Army Act 1955 s 70 (as amended) or the Air Force Act 1955 s 70 (as amended) (see para 422 ante).

6 Armed Forces Act 1976 s 7(1)(b). However, no person may be tried for such an offence in any case where proceedings on indictment for the corresponding civil offence must be brought within a limited time, unless the trial is begun within that time: s 7(4) (amended by the Armed Forces Act 1986 s 7(5), (6)). As to the classification of offences and the jurisdiction of magistrates see MAGISTRATES vol 29(2) (Reissue) para 653.

7 As to the categories of persons subject to military or air force law see para 307 et seq ante.

8 These provisions extend also to an offence which is substantially the same offence as an offence for which the person in question has already been tried or charged or which has been condoned or taken into consideration in sentencing that person: see the Army Act 1955 s 134(1) (amended by the Armed Forces Act 1991 s 26, Sch 2 para 5(1), (3)); the Air Force Act 1955 s 134(1) (amended by the Armed Forces Act 1991 Sch 2 para 5(1), (3)); and the Armed Forces Act 1976 s 6(17), Sch 3 para 16.

9 Army Act 1955 s 134(1)(a) (substituted by the Armed Forces Act 1966 s 26(1)(a), (3)); Air Force Act 1955 s 134(1)(a) (substituted by the Armed Forces Act 1966 s 26(1)(a), (2), (3)); Armed Forces Act 1976 s 6(17), Sch 3 para 16. This provision encompasses a standing civilian court held under any of the service discipline Acts: Army Act 1955 s 134(1)(a) (as so substituted); Air Force Act 1955 s 134(1)(a) (as so substituted); Armed Forces Act 1976 Sch 3 para 16. As to the service discipline Acts see para 302 ante. As to the effect of proceedings before a civil court see para 57 ante. For these purposes, a person ordered to be imprisoned or to undergo detention under the Army Act 1955 s 57(2) (as amended) or, as the case may be, the Air Force Act 1955 s 57(2) (as amended), which make provision for the summary dealing with offences before courts-martial (see para 411 ante), is deemed to have been tried by a standing civilian court for the offence: Army Act 1955 s 134(2)(e); Air Force Act 1955 s 134(2)(e); Armed Forces Act 1976 Sch 3 para 16.

10 Army Act 1955 s 134(1)(aa) (added by the Armed Forces Act 1966 s 26(1)(b), (3)); Air Force Act 1955 s 134(1)(aa) (added by the Armed Forces Act 1966 s 26(1)(b), (2), (3)); Armed Forces Act 1976 Sch 3 para 16. For these purposes, a person may not be deemed to have had an offence taken into consideration by a standing civilian court in sentencing him if the sentence is quashed (as well as in a case where the taking into consideration of the offence has been annulled by the reviewing authority): Army Act 1955 s 134(2)(b) (amended by the Armed Forces Act 1981 s 5(4)(b); and by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); Air Force Act 1955 s 134(2)(b) (amended by the Armed Forces Act 1981 s 5(4)(b); and by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II); Armed Forces Act 1976 Sch 3 para 16.

11 Army Act 1955 s 134(1)(b); Air Force Act 1955 s 134(1)(b); Armed Forces Act 1976 Sch 3 para 16.

12 Army Act 1955 s 134(1)(b) (amended by the Armed Forces Act 1996 s 5, Sch 1 paras 66, 67); Air Force Act 1955 s 134(1)(b) (amended by the Armed Forces Act 1996 Sch 1 paras 76, 77); Armed Forces Act 1976 Sch 3 para 16.

13 Army Act 1955 s 134(1)(c); Air Force Act 1955 s 134(1)(c); Armed Forces Act 1976 Sch 3 para 16. For these purposes, an offence is deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged with it: Army Act 1955 s 134(2)(d); Air Force Act 1955 s 134(2)(d); Armed Forces Act 1976 Sch 3 para 16.

14 See the Standing Civilian Courts Order 1997, SI 1997/172, art 91, Sch 4. The provisions so applied are those relating to the functions of: the prosecuting authority (see the Army Act 1955 s 83B(8)-(14); the Air Force Act 1955 s 83B(8)-(14) (both as added and amended); and para 315 ante); prosecuting officers (see the Army Act 1955 s 83C; the Air Force Act 1955 s 83C (both as added); and para 315 ante); the examination of witnesses on oath (see the Army Act 1955 s 93(1B); the Air Force Act 1955 s 93(1B) (both as added; prospectively repealed); and para 375 ante); the power to convict of an offence other than that charged (see the Army Act 1955 s 98; the Air Force Act 1955 s 98; and para 507 ante); proof by written statement (see the Army Act 1955 s 99A; the Air Force Act 1955 s 99A (both as added and amended); and para 502 ante); affirmations (see the Army Act 1955 s 102; the Air Force Act 1955 s 102 (both as amended); and para 375 ante); the trial and punishment of offences under service law notwithstanding the offender ceasing to be subject to it (see the Army Act 1955 ss 131(1), 132(3) (s 131(1) as amended, s 132(3) as substituted) and the Air Force Act 1955 ss 131(1), 132(3) (s 131(1) as amended, s 132(3) as substituted), as applied by the Army Act 1955 s 209(3)(g) and the Air Force Act 1955 s 209(3)(g)); custody of proceedings (see the Army Act 1955 s 141; the Air Force Act 1955 s 141 (both as amended); and para 447 ante); the arrest of persons unlawfully at large (see the Army Act 1955 s 190B; the Air Force Act 1955 s 190B (both as added); and para 65 ante); evidence generally (see the Army Act 1955 s 198; the Air Force Act 1955 s 198 (both as amended); and para 377 ante); proof of the outcome of a civil trial (see the Army Act 1955 s 199; the Air Force Act 1955 s 199 (both as amended), as applied by the Army Act 1955 s 209(4B) and the Air Force Act 1955 s 209(4B) (both as added and amended); and para 387 ante); evidence of proceedings (see the Army Act 1955 s 200; the Air Force Act 1955 s 200; and para 387 ante); the exclusion of enactments requiring the Attorney General's fiat (see the Army Act 1955 s 204A; the Air Force Act 1955 s 204A (both as added and amended); and para 422 ante); and proof by written statement and formal admission (see the Criminal Justice Act 1967 ss 9, 10 (both as amended), as applied by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997, SI 1997/173; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1535, 1538).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

521 Jurisdiction of [Service Civilian Courts]

TEXT AND NOTES--Replaced. Army Act 1955, Air Force Act 1955 and Armed Forces Act 1976 ss 6, 7, Sch 3 repealed: Armed Forces Act 2006 Sch 17. As to the jurisdiction of Service Civilian Courts (see PARA 520), see the Armed Forces Act 2006 s 51. As to double jeopardy and its effect on the jurisdiction on the Service Civilian Court, see ss 63-66.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/522. Procedure prior to and at trial by a standing civilian court.

522. Procedure prior to and at trial by a standing civilian court.

The prosecution and trial of offences by standing civilian courts¹ is governed principally by order of the Secretary of State², by which provision is made for the reference of cases and their associated documentation to the prosecuting authority³ and for the conduct of the prosecution by that authority, whose responsibility it is to determine the charges to be preferred, to prefer those charges, and to direct that they be tried by a standing civilian court⁴. The charge-sheet must, *inter alia*, state on what basis the accused is triable by standing civilian court and the charge or charges preferred and it must be signed by the prosecutor⁵. The form in which the charge or charges should be drawn is prescribed⁶. Thereafter the prosecution must send the prosecution papers⁷ to the court administration officer⁸ who, after consulting with the magistrate or the Judge Advocate General⁹, will appoint a date, time and place for the trial and serve the summons and prosecution papers on the accused¹⁰ and send copies of the charge-sheet and summons to the magistrate and the accused's commanding officer¹¹. Provision is made for the accused to object to any member or assessor¹² and to elect for trial by court-martial¹³.

An accused who is to be tried by standing civilian court must be afforded a proper opportunity to prepare his defence and a defending officer will be appointed for him unless he states in writing that he does not want one¹⁴. The accused may appoint a legal adviser to act for him¹⁵.

Provision is made for the appointment of a court recorder and interpreter¹⁶, the disclosure by the prosecution of unused material¹⁷, the service of additional evidence by the prosecution¹⁸ and for the summoning of witnesses¹⁹. Provision is made in respect of bankers' books²⁰.

At the trial the magistrate must conduct the proceedings in accordance with the law of England and Wales²¹ and, where there are no specific rules to the contrary, apply the same rules of evidence as would apply in a magistrates' court²². Detailed guidance as to procedure is given²³: (1) proceedings are similar to those in a magistrates' court except that where an accused does not appear it is the court administration officer and not the magistrate who decides whether the accused should be arrested and brought before the court²⁴; and (2) the accused must, prior to the commencement of the trial, be given the right to elect to be tried by court-martial²⁵.

There is also a specific procedure for objections by the defence to the magistrate, a member or an assessor²⁶. When the accused is arraigned the court must not accept a guilty plea if it considers, having regard to all the circumstances, that it should not do so²⁷. Unlike in the magistrates' court the prosecutor may, with the magistrate's leave, add to the charge-sheet or amend any charge²⁸; the court may also amend a charge-sheet of its own motion²⁹. There is a power to direct that the trial be concluded and the accused tried by a differently constituted court³⁰. The court also has power to make a special finding if its findings of fact support a conviction but differ in respect of the particulars in the charge³¹.

Witnesses and other persons whose duty it is to attend on or before the court enjoy the same privileges as a witness before a magistrates' court in England and Wales³².

1 As to the establishment and constitution of standing civilian courts see para 520 ante.

2 As to the Secretary of State see para 2 ante. The power to make orders for these purposes is conferred by the Armed Forces Act 1976 s 6(17), Sch 3 para 12. Such orders may make provision with respect to: the prosecution of offences which may be tried by standing civilian courts (Sch 3 para 12(1)(aa) (added by the Armed Forces Act 1996 s 5, Sch 1 para 103(1), (8)(a))); the trial of offences by standing civilian courts (Armed Forces Act 1976 Sch 3 para 12(1)(a)); the awarding of sentences by such courts (Sch 3 para 12(1)(b)); the

review of findings and sentences of such courts (Sch 3 para 12(1)(c)); appeals from such courts (Sch 3 para 12(1)(d)); the procedure to be observed in the bringing of charges (including the manner of election for trial by court-martial) (Sch 3 para 12(4)(a)); the taking of oaths by persons appointed magistrates or members of a panel (see para 520 ante) (Sch 3 para 12(4)(b)); preliminary proceedings (Sch 3 para 12(4)(ba) (Sch 3 para 12(4)(ba), (bb) added by the Armed Forces Act 1996 Sch 1 para 103(1), (8)(b)); the appointment of a magistrate for preliminary proceedings (Sch 3 para 12(4)(bb) (as so added)); the exercise of their functions by assessors and their rights in relation to trials at which they sit (Sch 3 para 12(4)(c)); sittings (Sch 3 para 12(4)(d)); procedure (Sch 3 para 12(4)(e)); the representation of the accused at trials and preliminary proceedings (Sch 3 para 12(4)(f) (amended by the Armed Forces Act 1996 Sch 1 para 103(1), (8)(c)); procuring the attendance of witnesses (Armed Forces Act 1976 Sch 3 para 12(4)(g)); the amendment of charges by the court (Sch 3 para 12(4)(h) (amended by the Armed Forces Act 1996 s 35(2), Sch 1 para 103(1), (8)(d), Sch 7 Pt I)); making a finding of guilty of a like offence (see the Armed Forces Act 1976 Sch 3 para 12(4)(j)); determining the cases which may be taken into consideration in sentencing (see Sch 3 para 12(4)(k)); the application of statutory provisions relating to written statements (Sch 3 para 12(4)(l) (amended by the Perjury (Northern Ireland) Order 1979, SI 1979/1814, art 19(1), Sch 1, para 27)); the transfer of cases to courts-martial (Armed Forces Act 1976 Sch 3 para 12(4)(n)); the procedure to be observed in bringing appeals (Sch 3 para 12(4)(o)); the forms of orders and other documents to be made for these purposes (Sch 3 para 12(4)(p)); and any other matter authorised or considered expedient by the Secretary of State (Sch 3 paras 12(1), (4)(q)). Orders are subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3 para 12(7). In pursuance of this power the Standing Civilian Courts Order 1997, SI 1997/172, has been made.

3 See *ibid* art 5. As to the meaning of 'the prosecuting authority' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 488 note 2 ante. As to the investigation of charges by a commanding officer prior to reference of the charge see para 353 ante; as to references to the prosecuting authority see para 354 ante.

4 See the Standing Civilian Courts Order 1997, SI 1997/172, art 6.

5 See *ibid* art 7. Provision is made for the amendment of the charge-sheet before trial: see art 13.

6 See *ibid* art 8, Sch 1.

7 I.e. a copy of the charge-sheet, a list of any witnesses whom the prosecutor proposes to call, copies of any statements of the prosecution witnesses, or other record of their evidence, a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts, and a list of all unused material: see *ibid* art 9(2).

8 See *ibid* art 9. As to the court administration officer see para 520 note 6 ante.

9 As to the appointment and duties of the Judge Advocate General, the Vice Judge Advocate General and the Assistant Judge Advocate General see paras 446-447 ante.

10 See the Standing Civilian Courts Order 1997, SI 1997/172, art 10, Sch 2. If the accused is under 17 his parent or guardian may be summonsed and the charge-sheet and prosecution papers must be served on him as well as on the accused: see art 11. The date, time and place of trial can be varied by the court administration officer prior to the opening of the trial: see art 14.

11 See *ibid* art 12.

12 See *ibid* art 15.

13 See the Armed Forces Act 1976 Sch 3 para 12(2); and the Standing Civilian Courts Order 1997, SI 1997/172, arts 16-19.

14 See *ibid* art 20.

15 See *ibid* art 21. The adviser must: (1) have a general qualification (see the Courts and Legal Services Act 1990 s 71; and LEGAL PROFESSIONS vol 65 (2008) PARA 742); (2) be an advocate or solicitor in Scotland; (3) be a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or (4) be a person having in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales and subject to punishment or disability for breach of professional rules: Standing Civilian Courts Order 1997, SI 1997/172, art 21(4). As to the meaning of 'Commonwealth country' see para 20 note 6 ante.

16 See *ibid* art 22.

17 See *ibid* art 24.

18 See *ibid* art 23.

- 19 See *ibid* art 26, Sch 2.
- 20 See *ibid* art 31, Sch 2.
- 21 See *ibid* art 27.
- 22 See the Armed Forces Act 1976 Sch 3 para 11(1) (amended by the Armed Forces Act 1991 s 26(1), Sch 2 para 4(2)). A standing civilian court must take judicial notice of all matters of notoriety and of all other matters of which judicial notice would be taken in a magistrates' court: Armed Forces Act 1976 Sch 3 para 11(2).
- 23 See the Standing Civilian Courts Order 1997, SI 1997/172, Pt IV (arts 32-72).
- 24 See *ibid* art 33.
- 25 See the Armed Forces Act 1976 Sch 3 paras 4, 12(2) (Sch 3 para 4 amended by the Armed Forces Act 1996 Sch 1 para 103(1), (4), Sch 7 Pt I); and the Standing Civilian Courts Order 1997, SI 1997/172, art 37. If the accused elects to be tried by court-martial, the court must notify the court administration officer in writing, who must refer the case to the prosecuting authority: art 37(2).
- 26 See *ibid* art 38.
- 27 See *ibid* art 42(2). Where a plea of guilty is not accepted by the court, the accused must enter a plea of not guilty: art 42(3).
- 28 See *ibid* art 44.
- 29 See *ibid* art 45.
- 30 See *ibid* art 53.
- 31 See *ibid* art 70.
- 32 See the Armed Forces Act 1976 Sch 3 para 10.

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

522 Procedure prior to and at trial by a [Service Civilian Court]

TEXT AND NOTES--Armed Forces Act 1976 ss 6, 7, Sch 3 repealed: Armed Forces Act 2006 Sch 17. As to the power of the Director of Service Prosecutions (see PARA 315, 316) where a case has been allocated for trial by the Service Civilian Court see the Armed Forces Act 2006 s 126. As to the establishment of the Service Civilian Court see PARA 520.

Before arraignment, the Service Civilian Court must decide whether it or the Court Martial should try the charge: see the Armed Forces Act 2006 s 279. Where the Service Civilian Court decides that it should try a charge, the defendant must be given the opportunity before arraignment to elect to be tried by the Court Martial: see s 280; and the Armed Forces (Service Civilian Court) Rules 2009, SI 2009/1209, r 42. The Armed Forces Act 2006 s 161 (power of Court Martial to convict of offence other than that charged) (see PARA 519A.2) applies in relation to the Service Civilian Court as it applies in relation to the Court Martial: Armed Forces Act 2006 s 281.

The Secretary of State may by rules make provision with respect to the Service Civilian Court, which may in particular make provision with respect to (1) sittings of the court, including the place of sitting and changes to the place of sitting; (2) trials and other

proceedings of the court; (3) the practice and procedure of the court; (4) evidence, including the admissibility of evidence; and (5) the representation of the defendant: see Armed Forces Act 2006 s 288. As to the rules so made, see the Armed Forces (Service Civilian Court) Rules 2009, SI 2009/120.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/523. Custody during standing civilian court proceedings.

523. Custody during standing civilian court proceedings.

As from a day to be appointed¹, provision is made for the taking into military or air force custody of a person subject to standing civilian court proceedings. The magistrate² may direct the arrest of the accused³ at any time before the conclusion of the trial if he is satisfied that taking the accused into custody is justified⁴. A person taken into custody in pursuance of these provisions is treated as being in such custody in pursuance of a magistrate's order⁵ and must be brought as soon as practicable before a magistrate (unless already before one) who must review the matter⁶ and may by order authorise the keeping of the accused in custody⁷ if:

- 578 (1) he is satisfied that there are substantial grounds for believing that the accused, if released from custody, would fail to attend any hearing in the proceedings against him, commit an offence while released, or interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person⁸;
- 579 (2) he is satisfied that the accused should be kept in custody for his own protection or, if he is under 17 years of age, for his own welfare⁹;
- 580 (3) he is satisfied that for want of time since the accused was charged with the offence it has not been practicable to obtain sufficient information for the purpose of taking the decisions required for the purposes of authorising his continuation in custody¹⁰;
- 581 (4) the accused, having been released from military or air force custody after being charged with the offence, has deserted or absented himself without leave¹¹; or
- 582 (5) the accused's case has been adjourned for inquiries or a report and it appears to the magistrate that it would be impracticable to complete the inquiries or make the report without keeping the accused in custody¹².

An order may not, however, authorise an accused being kept in custody after he is sentenced by a standing civilian court¹³.

If the magistrate does not authorise the keeping of the accused in custody, he must be released forthwith¹⁴, although he may be required to comply, before release or later, with such requirements as appear to the magistrate to be necessary for the purpose of securing his attendance at any hearing in the proceedings against him¹⁵.

1 The Army Act 1955 Sch 1A and the Air Force Act 1955 Sch 1A are added by the Armed Forces Act 2001 s 29, Sch 4 paras 6, 7, as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 The magistrate appointed in pursuance of the Armed Forces Act 1976 s 6(4) (see para 520 ante).

3 Any person with power to arrest the accused for an offence against any provision of the Army Act 1955 or the Air Force Act 1955 has the same power, exercisable in the same way, to arrest him pursuant to such a direction: Army Act 1955 Sch 1A para 3(1); Air Force Act 1955 Sch 1A para 3(1) (both prospectively added: see note 1 supra).

4 Army Act 1955 Sch 1A para 3(1); Air Force Act 1955 Sch 1A para 3(1) (both prospectively added: see note 1 supra). For these purposes, taking an accused into military or air force custody is justified if there are substantial grounds for believing that, if not taken into such custody, he would fail to attend any hearing in the

proceedings against him, commit an offence, injure himself, or interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person (Army Act 1955 Sch 1A para 3(2); Air Force Act 1955 Sch 1A para 3(2) (both as so prospectively added)), or if he has failed to attend any hearing in the proceedings against him (Army Act 1955 Sch 1A para 3(3); Air Force Act 1955 Sch 1A para 3(3) (both as so prospectively added)).

5 Army Act 1955 Sch 1A paras 1(2), 3(4)(a); Air Force Act 1955 Sch 1A paras 1(2), 3(4)(a) (as prospectively added: see note 1 supra). The order referred to in the text is an order under the Army Act 1955 s 75F(2) (as added) or the Air Force Act 1955 s 75F(2) (as added) (see para 343 ante); Army Act 1955 Sch 1A para 3(4)(a); Air Force Act 1955 Sch 1A para 3(4)(a) (both as so prospectively added).

6 Army Act 1955 s 75G(1), (8), Sch 1A paras 1(1), (2), 3(4)(b); Air Force Act 1955 s 75G(1), (8), Sch 1A paras 1(1), (2), 3(4)(b) (Army Act 1955 s 75G added by the Armed Forces Discipline Act 2000 s 3(1); Air Force Act 1955 s 75G added by the Armed Forces Discipline Act 2000 s 3(2); Army Act 1955 Sch 1A and the Air Force Act 1955 Sch 1A as prospectively added (see note 1 supra)). The review must be undertaken not later than the end of the period for which custody is authorised: Army Act 1955 s 75G(1) (as so added), Sch 1A paras 1(1), (2), 3(4)(b) (as so prospectively added); Air Force Act 1955 s 75G(1) (as so added), Sch 1A paras 1(1), (2), 3(4)(b) (as so prospectively added). A review may also be requested by the accused's commanding officer if it appears to him that the grounds on which the accused was ordered into custody have ceased to exist (a commanding officer may also release an accused on these grounds), and such a review must be carried out as soon as practicable: Army Act 1955 s 75G(2), (3) (as so added), Sch 1A para 1(1) (as so prospectively added); Air Force Act 1955 s 75G(2), (3) (as so added), Sch 1A para 1(1) (as so prospectively added). At the first review the accused may support an application for release from custody with any argument as to fact or law that he desires (whether or not he has advanced that argument previously); at subsequent reviews the magistrate need not hear arguments as to fact or law which have been heard previously: Army Act 1955 s 75G(5), (6) (as so added), Sch 1A para 1(1), (2) (as so prospectively added); Air Force Act 1955 s 75G(5), (6) (as so added), Sch 1A para 1(1), (2) (as so prospectively added).

7 On a review at a hearing at which the accused is legally represented, the magistrate may, if the accused consents, authorise the keeping of the accused in custody for a period of not more than 28 clear days: Army Act 1955 s 75G(7) (as added: see note 6 supra), Sch 1A para 1(1), (2) (as prospectively added: see note 1 supra); Air Force Act 1955 s 75G(7) (as added: see note 6 supra), Sch 1A para 1(1), (2) (as prospectively added: see note 1 supra). Subject to this, the period for which a magistrate may by order authorise the keeping of the accused in custody is such period, ending not later than eight days after the day on which the order is made, as he thinks fit having regard to the evidence before him: Army Act 1955 ss 75F(6), 75G(4), Sch 1A para 1(1), (2) (s 75F added by the Armed Forces Discipline Act 2000 s 2(1); the Army Act 1955 s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)); Air Force Act 1955 ss 75F(6), 75G(4), Sch 1A para 1(1), (2) (s 75F added by the Armed Forces Discipline Act 2000 s 2(2); the Air Force Act 1955 s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)).

8 Army Act 1955 ss 75F(2)(a), 75G(4), Sch 1A para 1(1), (2) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)); Air Force Act 1955 ss 75F(2)(a), 75G(4), Sch 1A para 1(1), (2) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)). In taking this decision the magistrate must have regard to the nature and seriousness of the alleged offence (and the probable method of dealing with the accused for it), the character, antecedents, associations and social ties of the accused, the accused's behaviour on previous occasions while charged with an offence and released from custody or while on bail in criminal proceedings, and (except where the accused is awaiting sentence) the strength of the evidence that the accused committed the offence, to the extent that each of those considerations appear to him to be relevant, and also to any other considerations which appear to be relevant (Army Act 1955 ss 75F(3), 75G(4), Sch 1A para 1(1), (2), (4) (ss 75F, 75G as so added; Sch 1A as so prospectively added); Air Force Act 1955 s 75F(3), 75G(4), Sch 1A para 1(1), (2), (4) (ss 75F, 75G as so added; Sch 1A as so prospectively added)) and, if the accused is charged with an offence the corresponding civil offence (see para 422 ante) for which is murder, manslaughter, rape, attempted murder or attempted rape and the magistrate decides not to authorise keeping in custody (representations as to the above considerations having been made), he must state the reasons for his decision and cause those reasons to be included in the record of proceedings (Army Act 1955 ss 75F(4), (5), 75G(4), Sch 1A para 1(1), (2) (ss 75F, 75G as so added; Sch 1A as so prospectively added); Air Force Act 1955 s 75F(4), (5), 75G(4), Sch 1A para 1(1), (2) (ss 75F, 75G as so added; Sch 1A as so prospectively added)).

9 Army Act 1955 ss 75F(2)(b), 75G(4), Sch 1A para 1(1), (2) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)); Air Force Act 1955 ss 75F(2)(b), 75G(4), Sch 1A para 1(1), (2) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)).

10 Army Act 1955 ss 75F(2)(c), 75G(4), Sch 1A para 1(1), (2) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)); Air Force Act 1955 ss 75F(2)(c), 75G(4), Sch 1A para 1(1), (2) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)).

11 Army Act 1955 ss 75F(2)(d), 75G(4), Sch 1A para 1(1) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)); Air Force Act 1955 ss 75F(2)(d), 75G(4), Sch 1A para 1(1) (s 75F as added (see note 7 supra); s 75G as added (see note 6 supra); and Sch 1A as prospectively added (see note 1 supra)).

12 Army Act 1955 s 75F(2)(e), Sch 1A para 1(1), (3) (s 75F as added (see note 7 supra); and Sch 1A as prospectively added (see note 1 supra)); Air Force Act 1955 s 75F(2)(e), Sch 1A para 1(1), (3) (s 75F as added (see note 7 supra); and Sch 1A as prospectively added (see note 1 supra)).

13 Army Act 1955 Sch 1A para 1(1), (5) (as prospectively added; see note 1 supra); Air Force Act 1955 Sch 1A para 1(1), (5) (as prospectively added: see note 1 supra).

14 Army Act 1955 Sch 1A para 2(1), (2)(a) (as prospectively added; see note 1 supra); Air Force Act 1955 Sch 1A para 2(1), (2)(a) (as prospectively added: see note 1 supra).

15 Army Act 1955 Sch 1A para 2(1), (2)(b) (as prospectively added; see note 1 supra); Air Force Act 1955 Sch 1A para 2(1), (2)(b) (as prospectively added: see note 1 supra). A person on whom any such requirement or any corresponding requirement under the Army Act 1955 s 75J(2)(b) (as added) or the Air Force Act 1955 s 75J(2)(b) (as added) (see para 345 ante) has been imposed who fails without reasonable cause to attend any standing civilian court hearing to which the requirement relates is guilty of an offence and liable on conviction by a standing civilian court to any punishment authorised by the Armed Forces Act 1976 s 8 (as amended) (see para 524 post) (Army Act 1955 Sch 1A para 2(1), (4), (5) (as so prospectively added); Air Force Act 1955 Sch 1A para 2(1), (4), (5) (as so prospectively added)), although provision is made for any such requirement or corresponding requirement (including one previously varied) to be varied or discharged by a magistrate on an application made by or on behalf of the accused or by the accused's commanding officer (see the Army Act 1955 Sch 1A para 2(1), (3) (as so prospectively added) and the Air Force Act 1955 Sch 1A para 2(1), (3) (as so prospectively added)).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

523 Custody during standing civilian court proceedings

TEXT AND NOTES--Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/524. Sentencing powers and procedure.

524. Sentencing powers and procedure.

The punishments which may be awarded by sentence of a standing civilian court¹ are imprisonment for a term not exceeding six months² or a fine not exceeding £5,000³. In addition, the court may make any of the orders which a court-martial may make in respect of a civilian who is subject to trial under military or air force law⁴. A separate sentence must be awarded for each offence in respect of which the court has recorded a finding of guilty⁵, and a sentence may consist of one or more punishments or orders or both⁶. Restitution and compensation orders may also be made⁷, and the court may defer sentence for a maximum of six months⁸.

Where any sentence of a standing civilian court is limited by reference to a period of time, that period begins to run from the beginning of the day on which the sentence is passed, unless it is suspended on review⁹. Where, however, the court passes any such sentence and the period of any previous sentence has not then expired, the new sentence may be ordered to begin to run from the expiry of that period¹⁰.

Provision is made for the making of pre-sentence reports and, where practicable, for the presentation of evidence of previous convictions and cautions¹¹. A schedule of offences of a similar nature may also be considered in passing sentence¹².

1 As to the establishment and constitution of standing civilian courts see para 520 ante. The punishments which a standing civilian court may award are restricted by the provisions as to young offenders contained in the Army Act 1955 s 71A (as added and amended) and the Air Force Act 1955 s 71A (as added and amended) (see paras 431, 433 ante): see the Armed Forces Act 1976 s 8(1) (amended by the Armed Forces Act 1991 s 26, Sch 2 para 10). Where a person is found guilty by a standing civilian court of an offence under the Army Act 1955 s 70 (as amended) or the Air Force Act 1955 s 70 (as amended) (civil offences: see para 422 ante) the court may not award a term of imprisonment or impose a fine which a magistrates' court in England or Wales could not award or impose for the corresponding civil offence: Armed Forces Act 1976 s 8(3). As to the penal powers of magistrates see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 1 et seq.

2 Armed Forces Act 1976 s 8(1)(a). A standing civilian court may award consecutive terms of imprisonment provided that they do not exceed 12 months in the aggregate: s 8(2). This limitation (which is further limited to six months in the case of young offenders) also applies to custodial orders (see note 4 infra): see the Army Act 1955 Sch 5A para 10(1)(c), (5A); the Air Force Act 1955 Sch 5A para 10(1)(c), (5A) (all as added and substituted); and para 434 ante. The power to sentence a young offender to imprisonment is similarly restricted: see the Army Act 1955 s 71A; the Air Force Act 1955 s 71A (both as added and amended); and para 431 ante.

3 Armed Forces Act 1976 s 8(1)(b) (amended by the Criminal Justice Act 1991 ss 71(3), 101(1), Sch 4 Pt I, Sch 12 para 6).

4 Armed Forces Act 1976 s 8(4)(a). The orders which may be so made are custodial orders, community supervision orders, compensation orders and orders requiring an offender's parents to pay a fine or compensation or enter into a recognisance, in addition to orders for absolute or conditional discharge: see the Army Act 1955 Sch 5A (as added and amended); the Air Force Act 1955 Sch 5A (as added and amended); and paras 433-438 ante. Such orders are treated as a punishment for the purposes of the Army Act 1955 and the Air Force Act 1955: Army Act 1955 s 209(3)(aa); Air Force Act 1955 s 209(3)(aa) (both added by the Armed Forces Act 1976 s 22(5), Sch 9 para 5). The power to make these orders is restricted in the case of young offenders: see note 2 supra.

There are a number of special requirements relating to the making of certain of these orders by standing civilian courts. Custodial orders, community supervision orders and orders requiring an offender's parents to pay a fine or compensation or enter into a recognisance must be drawn up in accordance with the specified form as set out in the Courts-Martial and Standing Civilian Courts (Army and Royal Air Force) (Additional Powers on Trial of Civilians) Regulations 1997, SI 1997/579, Sch 2 Pt I Forms 1-4, or in a form substantially to the like effect (reg 10); and must be served in accordance with regs 3, 11, Sch 2 Pt II. The requirements which may be contained in a community supervision order are set out in regs 7-9, Sch 1. Provision is made for the nomination,

specification and duties of supervisors by regs 4-6; and provision as to the discharge and modification of an order is made by reg 12. As to the making of these regulations see paras 430, 432 ante.

Provision has also been made under which the Secretary of State may by order empower standing civilian courts to pass suspended and partly suspended sentences of imprisonment on civilians subject to military or air force law (see the Criminal Justice Act 1988 s 50 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 103)), but at the date at which this volume states the law this power had not been exercised. As to the Secretary of State see para 2 ante. As to the civilians who are subject to military or air force law see para 311 ante.

5 See the Standing Civilian Courts Order 1997, SI 1997/172, art 80(1). As to the making of this order see para 522 ante.

6 See *ibid* art 80(2).

7 See the Army Act 1955 s 138 (as amended); the Air Force Act 1955 s 138 (as amended); the Armed Forces Act 1976 s 6(17), Sch 3 para 17(a)); and para 510 ante. The operation of any such order made by a standing civilian court is suspended until the end of the period within which notice of appeal may be given, and, if such notice is given, until the appeal is determined or abandoned: Army Act 1955 s 138(9)(a), (b); Air Force Act 1955 s 138(9)(a), (b); Armed Forces Act 1976 Sch 3 para 17(b).

8 See the Army Act 1955 Sch 5A para 2A (Sch 5A added by the Armed Forces Act 1976 s 8, Sch 4 para 1; Army Act 1955 Sch 5A para 2A added by the Armed Forces Act 1986 s 9(1); and amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 para 54, Sch 7 Pt 7); the Air Force Act 1955 Sch 5A para 2A (Sch 5A added by the Armed Forces Act 1976 Sch 4 paras 1, 2; Air Force Act 1955 Sch 5A para 2A added by the Armed Forces Act 1986 s 9(1); and amended by the Armed Forces Act 2001 ss 34, 38, Sch 6 para 54, Sch 7 Pt 7); and the Standing Civilian Courts Order 1997, SI 1997/172, art 79.

9 Armed Forces Act 1976 Sch 3 para 13. As to the review and suspension of sentences see para 525 post.

10 *Ibid* Sch 3 para 14.

11 See the Standing Civilian Courts Order 1997, SI 1997/172, arts 73, 74.

12 See *ibid* art 72.

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

524 Sentencing powers and procedure

TEXT AND NOTES--Armed Forces Act 1976 s 8, Sch 3, Army Act 1955 and Air Force Act 1955 repealed: Armed Forces Act 2006 Sch 17. As to the punishments available to the Service Civilian Court, see the Armed Forces Act 2006 s 282. As to the maximum term of imprisonment which may be imposed by the Service Civilian Court, see s 283; and as to the maximum amounts of fines and compensation orders, see s 284. For provision relating to the commencement of sentences of the Service Civilian Court, see Armed Forces Act 2006 s 289.

NOTE 4--Criminal Justice Act 1988 s 50 repealed: Armed Forces Act 2006 Sch 16 para 112, Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/525. Review of findings or sentence of standing civilian courts.

525. Review of findings or sentence of standing civilian courts.

A finding or sentence of a standing civilian court¹ may be reviewed² at any time and must be reviewed if a petition or notice of an appeal against finding or sentence is duly presented or given³. The powers of the reviewing authority are:

- 583 (1) in so far as the review is of a finding, to quash it (and, if the sentence relates only to the finding quashed, to quash the sentence)⁴;
- 584 (2) in so far as the review is of a sentence, to quash it⁵; and
- 585 (3) in any case to exercise the like powers of substituting findings or sentences, remitting or commuting punishment, or annulling the taking of other offences into consideration (and orders dependent on such taking into consideration) as are conferred on a reviewing authority in relation to the findings and sentences of courts-martial⁶.

The powers of substituting or commuting sentences may not, however, be exercised so as to impose a sentence which the court could not have imposed⁷. There is provision for the promulgation of the result of a review of finding or sentence⁸.

A reviewing authority may at any time suspend the sentence of a standing civilian court, and where the sentence of a person in custody is suspended he must be released⁹. At any time while a sentence is thus suspended, the reviewing authority which suspended it may determine the suspension¹⁰. Where, while a sentence is suspended, the person sentenced is further sentenced by a standing civilian court or a court-martial for a fresh offence, the suspension of the earlier sentence may be determined by order of the court awarding the later sentence, on awarding it, or by order of the appropriate authority¹¹ on the review of that sentence¹². A suspended sentence of a standing civilian court is automatically remitted at the expiry of one year from the date on which the suspension took effect, unless the suspension has been sooner determined¹³.

1 As to the establishment and constitution of standing civilian courts see para 520 ante.

2 Reviews may be undertaken by the higher authority who referred the civilian's case to the prosecuting authority (see para 522 ante) and by any superior officer or authority: Armed Forces Act 1976 s 6(17), Sch 3 para 20(9) (amended by the Armed Forces Act 1996 s 5, Sch 1 para 103(1), (10)). As to the meaning of 'the prosecuting authority' for the purposes of the Army Act 1955 and the Air Force Act 1955 see para 488 note 2 ante.

3 Armed Forces Act 1976 Sch 3 para 20(1). As to the presentation of petitions and the giving of notices of appeal against finding or sentence see Sch 3 paras 18, 19 (both as amended); and para 526 post. Where a petition is presented or notice of appeal is given the authority must review the finding or sentence as soon as may be after presentation of the petition or notice and after consideration of the matters alleged in it: Sch 3 para 20(1).

4 Ibid Sch 3 para 20(2)(a).

5 Ibid Sch 3 para 20(2)(b).

6 Ibid Sch 3 para 20(2)(c) (substituted by Armed Forces Act 1981 s 5(3); and amended by Armed Forces Act 1996 s 35(1), Sch 9 para 9(b)). As to the powers of substitution, remission and commutation possessed by the reviewing authority, and as to the annulment of the taking of other offences into consideration, see the Army Act 1955 s 115 and the Air Force Act s 115 (both as substituted and amended); and para 358 ante. Any

substituted finding or sentence, or sentence which has effect after a remission or commutation of punishment, must be treated for all purposes as the finding or sentence of the court: Armed Forces Act 1976 Sch 3 para 20(2). In exercising these powers in relation to punishments, the reviewing authority may substitute, remit or commute any of the orders that a standing civilian court is empowered to make under the Army Act 1955 Sch 5A (as added and amended) or the Air Force Act 1955 Sch 5A (as added and amended) (ie custodial orders, community supervision orders, compensation orders, orders requiring an offender's parents to pay a fine or compensation or enter into a recognisance, and orders for absolute or conditional discharge: see paras 430 et seq, 524 ante), since such orders are treated as a punishments for the purposes of the Army Act 1955 and the Air Force Act 1955: Army Act 1955 s 209(3)(aa); Air Force Act 1955 s 209(3)(aa) (both added by the Armed Forces Act 1976 s 22(5), Sch 9 para 5). To ascertain the relative severity of the punishments and orders which a standing civilian court may award, reference may need to be made to the Army Act 1955 Sch 5A para 15 and the Air Force Act 1955 Sch 5A para 15 (both as added and amended; prospectively amended) (see paras 430, 432 ante). The powers of a reviewing authority are set out at para 512 ante.

7 Armed Forces Act 1976 Sch 3 para 20(3).

8 See the Standing Civilian Courts Order 1997, SI 1997/172, art 84(2). The result of any review must be promulgated to the accused with reasons for action: art 84(2). As to promulgation see the Army Act 1955 s 140; and the Air Force Act 1955 s 140 (both amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II).

9 Armed Forces Act 1976 Sch 3 para 20(4), (5) (Sch 3 para 20(4) substituted by the Armed Forces Act 1981 s 10, Sch 1 para 4(1), (3)).

10 Armed Forces Act 1976 Sch 3 para 20(5A) (added by the Armed Forces Act 1981 Sch 1 para 4(1), (4)).

11 Where the later sentence is awarded by a standing civilian court, 'the appropriate authority' means the reviewing authority for the purpose of reviewing the finding or sentence of that court (see note 2 supra); where it is awarded by a court-martial, 'the appropriate authority' means the authority which reviews the finding or sentence of that court-martial (see para 512 ante): Armed Forces Act 1976 Sch 3 para 20(7).

12 Ibid Sch 3 para 20(6) (amended by the Armed Forces Act 1981 Sch 1 para 4(1), (5)).

13 Armed Forces Act 1976 Sch 3 para 20(8).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

525 Review of findings or sentence of standing civilian courts

TEXT AND NOTES--Armed Forces Act 1976 s 6, Sch 3 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/526. Petitions and appeals from standing civilian courts.

526. Petitions and appeals from standing civilian courts.

At any time after he has been sentenced by a standing civilian court¹, a person² may present a petition³ against the finding or the sentence of the court, or both⁴, and as soon as may be after the presentation of that petition and after consideration of the matters alleged in it, the reviewing authority must review the finding or sentence⁵.

If a person pleaded guilty before the standing civilian court he is entitled to appeal to a court-martial against sentence only⁶. If he pleaded not guilty he is entitled to appeal against both conviction and sentence⁷. In either case he must lodge notice of appeal, in the prescribed form and stating his intention, with the higher authority who referred his case to the prosecuting authority within 40 days of the date of sentence⁸. There is, however, no right of appeal against community supervision orders, recognisances entered into by a parent or guardian, or absolute and conditional discharges⁹. The authority must ensure that the finding or sentence against which the appeal is made is reviewed as soon as may be after the matters alleged in it have been considered¹⁰. Unless on that review the appellant is granted the relief which he seeks, the higher authority must then refer the matter to the prosecuting authority which must take the necessary steps to bring the appeal before a court-martial¹¹.

An appeal against conviction on any charge is required to take the form of a rehearing¹², but an appeal against sentence alone does not include a rehearing of the charge in respect of which the sentence was imposed¹³. The procedure generally on the hearing of an appeal resembles that of a court-martial sitting as a court of first instance for the trial of a civilian¹⁴. Whether the appeal is against sentence or against conviction, the court-martial may award only a sentence which a standing civilian court could award¹⁵. Where the appeal is against conviction alone and the court finds the accused guilty of the charge, it must pass as the sentence of the court-martial in respect of that charge the sentence passed for that offence by the standing civilian court or any lesser sentence which it considers appropriate¹⁶. In any other case, before passing sentence¹⁷ the court-martial is required to take into consideration any offences taken into consideration by the standing civilian court and the result of any review of the findings or sentence of that court¹⁸. A separate sentence must be awarded for each offence¹⁹, and unless the court directs otherwise the term of any such sentence begins to run from the time from which it would have run if passed in the proceedings from which the appeal was brought²⁰.

A person who has given notice of appeal from a decision of a standing civilian court to a court-martial may abandon the appeal, or any part of it, at any time before the court-martial commences to hear the appeal²¹. Thereafter the appellant may not abandon his appeal without the leave of the court²². The matter of whether such leave should be granted is a matter of procedure and accordingly is for the judge advocate to decide²³.

If an appellant fails to appear before the court-martial at the appointed time or subsequently thereafter, the judge advocate may, if he considers that there is no reasonable explanation for the failure to appear, direct that the appeal be treated as abandoned²⁴. If an appellant has abandoned his appeal or the judge advocate has directed that it should be treated as abandoned it cannot be revived²⁵.

1 As to the establishment and constitution of standing civilian courts see para 520 ante.

2 In certain circumstances where the sentenced person is a young offender the right of petition may fall on the offender's parent or guardian: see the Army Act 1955 Sch 5A para 13(3) (as added and substituted); the Air Force Act 1955 Sch 5A para 13(3) (as added and substituted); and para 438 ante.

3 The petition must be addressed and presented in a specified form to the reviewing authority, ie the higher authority who referred the petitioner's case to the prosecuting authority for possible trial: see the Armed Forces Act 1976 s 6(17), Sch 3 paras 19, 20(9) (Sch 3 para 20(9) amended by the Armed Forces Act 1996 s 5, Sch 1 para 103(1), (10)); and the Standing Civilian Courts Order 1997, SI 1997/172, art 84(1), Sch 2, Sch 3 para 12(4) (p).

4 Armed Forces Act 1976 Sch 3 para 19 (amended by the Armed Forces Act 1996 s 35, Sch 6 para 9(a), Sch 7 Pt III).

5 Armed Forces Act 1976 Sch 3 para 20(1). See para 525 ante. The result of any review must be promulgated to the accused with reasons for action: Standing Civilian Courts Order 1997, SI 1997/172, art 84(2). As to promulgation see the Army Act 1955 s 140; and the Air Force Act 1955 s 140 (both amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II).

6 Armed Forces Act 1976 Sch 3 para 18(1)(a).

7 Ibid Sch 3 para 18(1)(b).

8 Ibid Sch 3 paras 18(3), 20(9) (Sch 3 para 20(9) as amended: see note 3 supra); Standing Civilian Courts Order 1997, SI 1997/172, art 85, Sch 2, Sch 3 para 12(4)(p).

9 See the Army Act 1955 Sch 5A paras 5(4), 14(8) (as added), the Air Force Act 1955 Sch 5A paras 5(4), 14(8) (as added); the Armed Forces Act 1976 Sch 3 para 18(1); and paras 431, 435, 437, 438 ante. A person sentenced in respect of a breach of a conditional discharge or a community supervision order may, however, appeal (Sch 3 para 18(2)), and the parent or guardian against whom an order for parental recognisance is made may appeal against that order because he may petition (see note 2 supra).

10 Ibid Sch 3 para 20(1). The review may be carried out by the higher authority itself or by any superior officer or authority: Sch 3 para 20(9).

11 See ibid Sch 3 para 18(4) (amended by Armed Forces Act 1996 Sch 1 para 103(9)(a), (b)). The matter will go forward as if the appeal were from a finding or sentence of a court-martial and in accordance with the relevant rules: see the Armed Forces Act 1976 Sch 3 para 18(4); the Courts-Martial (Army) Rules 1997, SI 1997/169, r 84(2), Sch 6 Pt III; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 84(2), Sch 6 Pt III.

12 Armed Forces Act 1976 Sch 3 para 18(5).

13 Ibid Sch 3 para 18(6).

14 See the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 Pt III; and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 Pt III.

15 Armed Forces Act 1976 Sch 3 para 18(11).

16 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 6(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 6(1).

17 Ie in accordance with the Courts-Martial (Army) Rules 1997, SI 1997/169, ss 75-83 or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, ss 75-83, as the case may be.

18 See the Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 6(2)-(4); and the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 6(2)-(4).

19 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 6(5); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 6(5).

20 Armed Forces Act 1976 Sch 3 para 18(7). Accordingly the Army Act 1955 s 118 and the Air Force Act 1955 s 118 (both as amended) (see para 514 ante), which make provision for the commencement of sentences, do not apply to any such sentence: Armed Forces Act 1976 Sch 3 para 18(7). Subject to these provisions, any such sentence is to be treated as if it had been a sentence passed on a trial by court-martial (Sch 3 para 18(8)); appeal therefore lies to the Courts-Martial Appeal Court in the same way as appeal lies in respect of any conviction or sentence of a court-martial (see the Army Act 1955 s 113 and the Air Force Act 1955 s 113 (both as added and amended); and para 512 ante).

21 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 8(1); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 8(1).

22 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 8(2); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 8(2).

23 See the Army Act 1955 s 84B(3) (as added); the Air Force 1955 s 84B(3) (as added); and para 484 ante.

24 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 8(3); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 8(3).

25 Courts-Martial (Army) Rules 1997, SI 1997/169, Sch 6 para 8(4); Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, Sch 6 para 8(4).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

526 Petitions and appeals from standing civilian courts

TEXT AND NOTES--Armed Forces Act 1976 s 6, Sch 3 repealed: Armed Forces Act 2006 Sch 17. As to appeals from Service Civilian Courts, see the Armed Forces Act 2006 ss 285-287; and the Armed Forces (Court Martial) Rules 2009, SI 2009/2041.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/527. Conditional release pending appeal or review.

527. Conditional release pending appeal or review.

As from a day to be appointed¹, the Secretary of State² may by order³ make provision enabling a person who has been sentenced by a standing civilian court to be released from custody, pending a determination of an appeal of his conviction⁴ or the completion of a review of any finding or sentence⁵, subject to conditions⁶.

1 The Armed Forces Act 2001 s 30 is to be brought into force as from a day to be appointed by order under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 Such an order may, in particular, make provision: (1) as to the court to which or person to whom any application for release from custody is to be made; (2) as to the manner in which any such application is to be made; (3) as to the criteria to be applied when making a decision under the order; (4) as to the conditions that may be imposed; (5) as to the enforcement of the attendance or return to custody of the convicted person; (6) as to appeals against decisions taken under the order; and (7) for the time during which the convicted person is released from custody to be disregarded in computing the term of any sentence to which he is for the time being subject: Armed Forces Act 2001 s 30(3) (not yet in force). The order may: (a) make provision equivalent to that made by any provision of the Bail Act 1976, the Magistrates' Courts Act 1980 or the Supreme Court Act 1981 relating to bail in criminal proceedings, subject to such modifications as may be specified in the order; (b) make different provision in relation to different courts; (c) confer powers of arrest; and (d) make such amendments of the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, the Courts-Martial (Appeals) Act 1968 or the Armed Forces Act 1976 as appear to the Secretary of State to be necessary or appropriate in consequence of the order: Armed Forces Act 2001 s 30(4)(a)-(c), (e) (not yet in force). As to the statutory provisions relating to bail in criminal proceedings see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1165 et seq; MAGISTRATES vol 29(2) (Reissue) para 718. An order under the Armed Forces Act 2001 s 30 (as prospectively added) may also create offences punishable with imprisonment for such term not exceeding two years as may be prescribed or by any less punishment provided by the service discipline Acts (this power to be construed with the Army Act 1955 s 71(1), the Air Force Act 1955 s 71(1), and the Naval Discipline Act 1957 s 43 (all as amended) (see para 424 ante), which set out the scale of punishments applicable to military, air force and naval offenders), although it may not make provision enabling a standing civilian court to award by sentence imprisonment for a term exceeding six months or a fine exceeding £5,000: Armed Forces Act 2001 s 30(4)(d), (5), (6) (not yet in force). As to the standing civilian court see para 520 et seq ante. As to the service discipline Acts see para 302 ante.

4 I.e. the determination of an appeal to a court-martial or of an appeal from a court-martial to the Courts-Martial Appeal Court: Armed Forces Act 2001 s 30(2)(c)(i) (not yet in force). As to the Courts-Martial Appeal Court see para 529 et seq post. For appeals from courts-martial to the Courts-Martial Appeal Court see para 529 post. For appeals from a standing civilian court to a court-martial and thereafter to the courts-martial appeal court see para 526 ante.

5 I.e. the completion of a review under the Armed Forces Act 1976 Sch 3 para 20 (as amended) (see para 525 ante) of any finding or sentence: Armed Forces Act 2001 s 30(2)(c)(ii) (not yet in force).

6 Ibid s 30(1) (not yet in force).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

527 Conditional release pending appeal or review

TEXT AND NOTES--Armed Forces Act 2001 s 30 (amended by the Armed Forces Act 2006 Sch 16 para 195) now in force: SI 2006/2309. In exercise of his powers under the Armed Forces Act 2001 s 30, the Secretary of State has made the Armed Forces (Conditional Release from Custody) Order 2009, SI 2009/991, and the Court Martial Appeal Court (Bail) Order 2009, SI 2009/992.

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/ (6) STANDING CIVILIAN COURTS/528. Costs.

528. Costs.

As from a day to be appointed¹, the Secretary of State² may by regulations³ make provision empowering standing civilian courts, in any case where the court is satisfied that one party to proceedings for an offence under any of the service discipline Acts⁴ has incurred costs⁵ as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs⁶. It is also provided that, in any proceedings for an offence under any of the service discipline Acts, a standing civilian court may disallow, or (as the case may be) order the legal or other representative⁷ concerned to meet, the whole of any wasted costs⁸ or such part of them as may be determined in accordance with regulations⁹.

1 The Armed Forces Act 2001 ss 26-28 are to be brought into force as from a day to be appointed by order under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 The regulations must provide that a person against whom an order is made by a standing civilian court under the regulations may appeal to the High Court in England and Wales: Armed Forces Act 2001 s 26(3)(b) (not yet in force). The regulations may, in particular: (1) allow the making of an order as to the payment of costs at any time during the proceedings; (2) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 or under any legal aid scheme operated by any of Her Majesty's forces; (3) make provision as to the account to be taken of such an order in the making of any other order as to costs in respect of the proceedings; (4) contain provision equivalent to that made by the Prosecution of Offences Act 1985 s 18(5) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2063) in relation to a magistrates' court, subject to such modifications as the Secretary of State thinks fit; and (5) make provision as to appeals against orders made by virtue of the regulations: Armed Forces Act 2001 s 26(2)(a)-(e) (not yet in force). As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

4 As to the service discipline Acts see para 302 ante.

5 Where any of Her Majesty's forces incurs costs in respect of the exercise by the prosecuting authority of its functions as a party to proceedings under the service discipline Acts, those costs are taken for these purposes to have been incurred by the prosecuting authority (Armed Forces Act 2001 s 28(1) (not yet in force)), although regulations under s 26 (not yet in force) or s 27 (not yet in force) may make provision as to the costs incurred by any of Her Majesty's forces which are or are not to be taken to have been incurred by the prosecuting authority and as to the person to whom, or account into which, any payment in respect of costs incurred by the prosecuting authority is to be made (s 28(2) (not yet in force)). For these purposes, 'the prosecuting authority' means the prosecuting authority appointed under the Army Act 1955 s 83A, the Air Force Act 1955 s 83A, or the Naval Discipline Act 1957 s 52H (all as added) (see paras 315-316 ante), as the case may be: Armed Forces Act 2001 s 28(3) (not yet in force).

6 Ibid s 26(1) (not yet in force).

7 For these purposes, 'legal or other representative', in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or a prosecuting officer appointed under the Army Act 1955 s 83C, the Air Force Act 1955 s 83C, or the Naval Discipline Act 1957 s 52J (all as added) (see paras 315-316 ante), as the case may be: Armed Forces Act 2001 s 27(3) (not yet in force).

8 Ie any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative, or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay: ibid s 27(3) (not yet in force).

9 Ibid s 27(1)(d) (not yet in force). The regulations must provide that a legal or other representative against whom action is taken by a standing civilian court under these powers may appeal to the High Court in England and Wales: s 27(2)(b)) (not yet in force). 'Regulations' means regulations made by the Secretary of State: s 27(3) (not yet in force).

UPDATE

520-528 [Service] Civilian Courts

Standing Civilian Courts replaced by Service Civilian Courts: see Armed Forces Act 2006 s 277; and PARA 520 et seq.

528 Costs

TEXT AND NOTES--See the Armed Forces (Proceedings) (Costs) Regulations 2009, SI 2009/993.

TEXT AND NOTES 1-6--Armed Forces Act 2001 s 26(1)-(3) amended: Armed Forces Act 2006 Sch 16 para 192.

TEXT AND NOTE 1--Day now appointed: SI 2005/2861.

NOTE 3--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

NOTE 5--Armed Forces Act 2001 s 28(1), (2) amended, s 28(3) repealed: Armed Forces Act 2006 Sch 16 para 194, Sch 17.

TEXT AND NOTES 7-9--Armed Forces Act 2001 s 27(1), (2) amended: Armed Forces Act 2006 Sch 16 para 193(2), (3).

NOTE 7--Definition of 'legal or other representative' amended: Armed Forces Act 2006 Sch 16 para 193(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(i) In general/529. Inherent right of appeal to the Crown; the sovereign's prerogative of pardon.

(7) COURTS-MARTIAL APPEALS

(i) In general

529. Inherent right of appeal to the Crown; the sovereign's prerogative of pardon.

It has long been recognised that a person convicted by court-martial has a right to appeal to the Crown against conviction or sentence, and that the royal prerogative extends to the quashing of any such conviction or sentence¹. This prerogative right is expressly saved, subject to certain limitations as to the time of its being exercised². In practice, however, the exercise of those rights has been superseded by the statutory right of appeal to the Courts-Martial Appeals Court against a finding or sentence by a court-martial³. The exercise, in relation to the findings and sentences of courts-martial, of Her Majesty's prerogative of pardon is also expressly saved⁴.

¹ It seems that the action taken in the case of Admiral Byng in 1755 was based on the recognition of these rights. The Lords of the Admiralty, having been petitioned for a review of the sentence, presented a memorial to the King praying 'that the opinion of the judges might be taken, whether the sentence was legal'. The matter was referred to the judges and their report communicated to the Admiralty by Order in Council: see Delafons's *Naval Courts-Martial* (1805) 290 et seq, where the author's opinion is added that appeals 'may certainly be made on subjects of less moment'. In addition, the question of jurisdiction may sometimes be tested by an action for false imprisonment (see paras 53-54 ante; and TORT vol 97 (2010) PARA 549). As to applications for the prerogative orders of habeas corpus, quashing orders or prohibiting orders, where the jurisdiction of a service authority or tribunal is in question, see para 56 ante. See further JUDICIAL REVIEW vol 61 (2010) PARA 687 et seq.

² See the Courts-Martial (Appeals) Act 1968 s 54(1), which provides that the saving of Her Majesty's right to quash a conviction by court-martial, by virtue of her royal prerogative or otherwise, is effective so far as regards the exercise of such right at a time before the receipt by the registrar of the Courts-Martial Appeal Court of an application for leave to appeal to the court, or of particulars of such an application furnished pursuant to s 9 (see para 533 post), whichever first occurs.

³ See the Courts-Martial (Appeals) Act 1968 s 8(1) (as amended), which provides for an appeal by a serviceman or a civilian against conviction and sentence (save where the sentence is fixed by law). See para 530 post.

⁴ Courts-Martial (Appeals) Act 1968 s 54(2). As to Her Majesty's prerogative of pardon see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 823 et seq. The sovereign can no longer review a court-martial finding or sentence.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

529-530 In general

As to prosecution appeals, see the Court Martial (Prosecution Appeals) Order 2009, SI 2009/2044. See also *Prosecution Appeal (No 33 of 2007)*; *R v A* [2008] EWCA Crim 1034, [2009] 1 All ER 1103, C-MAC.

529 Inherent right of appeal to the Crown; the sovereign's prerogative of pardon

TEXT AND NOTE 2--Courts-Martial (Appeals) Act 1968 s 54(1) amended: Armed Forces Act 2006 Sch 8 para 49.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(i) In general/530. Statutory right of appeal to the Courts-Martial Appeal Court; rules of court.

530. Statutory right of appeal to the Courts-Martial Appeal Court; rules of court.

From any conviction or sentence by a naval, army or air force court-martial¹ there is a statutory right of appeal to the Courts-Martial Appeal Court², and in certain circumstances special references may be made to that court³. From a decision of the Courts-Martial Appeal Court, appeal lies with leave to the House of Lords where a point of law of general public importance is involved⁴. Rules of court, made by statutory instrument and subject to annulment in pursuance of a resolution of either House of Parliament⁵, may provide for regulating the procedure and practice to be followed by the Courts-Martial Appeal Court, and may make different provision for different classes of case and may provide for any incidental or supplementary matters which seem necessary or expedient⁶.

1 'Court-martial' means a naval, army or air force court-martial: Courts-Martial (Appeals) Act 1968 s 57(1). 'Army court-martial' and 'air force court-martial' mean, respectively, a court-martial under the Army Act 1955 or the Air Force Act 1955; 'naval court-martial' means a court-martial under the Naval Discipline Act 1957: Courts-Martial (Appeals) Act 1968 s 57(1). 'Army court-martial' also includes a prisoner of war court-martial constituted under a royal warrant governing the maintenance of discipline among prisoners of war: s 56, Sch 3 para 2. As to prisoners of war see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 433 et seq.

2 Ibid ss 1(1), 8(1) (amended by the Armed Forces Act 1971 s 73(2); and the Armed Forces Act 1996 s 17(2)). The right is exercisable only with the leave of that court: Courts-Martial Appeals Act 1968 s 8(1). With such leave, appeals may also be brought by a civilian on whom a fine is imposed or against whom a compensation order is made under the Army Act 1955 s 133A, Sch 5A para 13 (as added and amended), the Air Force Act 1955 s 133A, Sch 5A para 13 (as added and amended), or the Naval Discipline Act 1957 s 118, Sch 4A para 13 (as added and amended) (see para 438 ante): Courts-Martial (Appeals) Act 1968 s 8(1A)(b) (added by the Armed Forces Act 1976 s 22(5), Sch 9 para 16). As from a day to be appointed, this provision is to be amended by the Armed Forces Act 2001 s 34, Sch 6 Pt 6 para 55). At the date at which this volume states the law no such day had been appointed. With such leave, there is a right of appeal against findings of not guilty by reason of insanity and of unfitness to stand trial: see the Courts-Martial (Appeals) Act 1968 ss 21, 24 (both as amended); and paras 461, 500 ante. The provisions of s 8(1) (as amended) provide a single right of appeal incorporating the right to apply once only for leave to appeal (*R v Grantham* [1969] 2 QB 574, [1969] 2 All ER 545, C-MAC), but this may in effect be supplemented by a reference to the court by the Secretary of State under the Courts-Martial (Appeals) Act 1968 s 34(1)(b) (see para 531 post). As to the Secretary of State see para 2 ante.

The Courts-Martial Appeal Court is a superior court of record and, for the purposes of the Courts-Martial (Appeals) Act 1968 and subject to its provisions, has full power to determine, in accordance with the Act, any question necessary to be determined for the purpose of doing justice in any case before the court: s 1(2).

3 See ibid s 34 (as amended); and para 531 post. As to the constitution and status of the Courts-Martial Appeal Court and its officers, and as to its composition for particular sittings, see COURTS vol 10 (Reissue) paras 801-804. On a number of matters (including the giving of leave to appeal), a single judge of the appeal court may exercise the powers of the court and if he refuses an application the applicant is entitled to have his application determined by the full court: s 36(2) (amended by the Supreme Court Act 1981 s 145(1), (5)). As to the procedure on application to a single judge see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8 (amended by SI 1972/798). As to rights of audience before the Courts-Martial Appeal Court see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 21 (substituted by SI 1997/580). As to the powers of the appeal court to suspend, annul or vary orders made for restitution or compensation on a conviction for theft etc see para 510 ante. The remuneration of the officers and servants of the court, and such other of its expenses as the Treasury may sanction, must be defrayed out of money provided by Parliament: Courts-Martial (Appeals) Act 1968 s 7(3). The remuneration of specially appointed judges of the court, and the travelling and subsistence allowances of any of its judges, may also be paid out of money so provided: s 2(3). As to witnesses' expenses see s 33 (applied in relation to remuneration for certain medical reports by the Criminal Justice Act 1967 s 32(2) (as amended)); and para 540 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

4 Courts-Martial Appeals Act 1968. See COURTS vol 10 (Reissue) paras 362, 364, 801. As to the form of applications in relation to appeals in the House of Lords see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 18.

5 See the Courts-Martial (Appeals) Act 1968 s 49(3), (4). Further rules of court may be made in relation to documentary evidence in courts-martial appeals proceedings: see the Criminal Justice Act 1988 s 146, Sch 13 paras 1, 5 (s 146 amended by the Armed Forces Act 2001 s 38, Sch 7 Pt 1; and the Criminal Justice Act 1988 Sch 13 para 1 amended by the Armed Forces Act 1996 s 5, Sch 1 para 109). See eg the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 14B (added by SI 1997/580) (evidence through television link).

6 Courts-Martial Appeals Act 1968 s 49(1), (2). The rules are made by the Lord Chief Justice with the approval of the Lord Chancellor: s 49(1). As to the Lord Chief Justice see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 303; COURTS vol 10 (Reissue) para 515 et seq. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. Rules of court may also make provision for securing the safe custody (during the period of suspension of operation of an order for restitution or compensation pending or during appeal to the Courts-Martial Appeal Court or from that court to the House of Lords) of property ordered to be restored or handed over or of money to which the order relates (see para 510 ante): Army Act 1955 s 138(9) (amended by the Courts-Martial (Appeals) Act 1968 s 58, Sch 4; and the Armed Forces Act 1976 s 14, Sch 7 para 1); Air Force Act 1955 s 138(9) (amended by the Courts-Martial (Appeals) Act 1968 Sch 4; and the Armed Forces Act 1976 Sch 7 para 1); Naval Discipline Act 1957 s 77(1), (3) (amended by the Courts-Martial (Appeals) Act 1968 Sch 4; and the Armed Forces Act 1976 Sch 7 para 4(1)). As to the provision for the safeguarding of property or money pending or during an appeal see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 20. The performance of any duty imposed upon any person under the Courts-Martial (Appeals) Act 1968 or the Courts-Martial Appeal Rules 1968, SI 1968/1071 (as amended) may be enforced by order of the court: r 23. Non-compliance with the rules by an appellant does not prevent the further prosecution of his appeal unless the court or a judge of the court otherwise directs; and the registrar of the court must forthwith notify the appellant of any such directions given by the court or a judge where neither the appellant nor his representative was present at the time when such directions were given: r 22.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

529-530 In general

As to prosecution appeals, see the Court Martial (Prosecution Appeals) Order 2009, SI 2009/2044. See also *Prosecution Appeal (No 33 of 2007)*; *R v A* [2008] EWCA Crim 1034, [2009] 1 All ER 1103, C-MAC.

530 Statutory right of appeal to the [Court Martial] Appeal Court; rules of court

TEXT AND NOTES 1, 2--Courts-Martial (Appeals) Act 1968 ss 1(1), 8(1) further amended: Armed Forces Act 2006 Sch 8 paras 3, 7.

NOTES 1, 7--Courts-Martial (Appeals) Act 1968 s 56 substituted, Sch 3 repealed: Armed Forces Act 2006 Sch 8 paras 50, 55.

NOTE 1--Definitions of 'court-martial', 'army court-martial', 'air force court-martial' and 'naval court-martial' repealed: Armed Forces Act 2006 Sch 8 para 51.

NOTES 3-6--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 4--Courts-Martial (Appeals) Act 1968 s 39 (which now refers to appeals lying to the Supreme Court) amended: Armed Forces Act 2006 Sch 8 para 42.

TEXT AND NOTES 5, 6--Courts-Martial (Appeals) Act 1968 s 49(1), (2) amended, s 49(3), (4) repealed: Constitutional Reform Act 2005 Sch 1 para 9, Sch 18 Pt 1.

NOTE 5--Criminal Justice Act 1988 s 146, Sch 13 para 1 further amended: Armed Forces Act 2006 Sch 16 paras 113, 115.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(ii) Special References/531. Special references to the Courts-Martial Appeal Court.

(ii) Special References

531. Special references to the Courts-Martial Appeal Court.

If, in the case of the conviction of a person by court-martial, it appears to the Judge Advocate of Her Majesty's Fleet¹ or the Judge Advocate General² that the finding of the court-martial involves a point of law of exceptional importance which in his opinion should be determined by the Courts-Martial Appeal Court, he may refer the finding to that court³. If it appears to the Secretary of State, on consideration of matters appearing to him not to have been brought to the notice of the court-martial at the trial, to be expedient that the finding should be considered or reconsidered by the Courts-Martial Appeal Court, he may refer the finding for consideration or reconsideration to that court⁴. The Secretary of State may also, if consideration by the Courts-Martial Appeal Court appears to him for any reason to be desirable, refer the sentence⁵ passed on any person convicted by a court-martial to the Courts-Martial Appeal Court⁶.

1 As to the Judge Advocate of Her Majesty's Fleet see para 445 ante.

2 As to the Judge Advocate General see paras 446-447 ante.

3 Courts-Martial Appeals Act 1968 s 34(1)(a). See also note 6 infra.

4 Ibid s 34(1)(b). As to the Secretary of State see para 2 ante. See also note 6 infra.

5 'Sentence', in relation to an offence, includes any order made by a court when dealing with an offender: ibid s 57(1) (definition added by the Armed Forces Act 1996 s 17(7)).

6 Courts-Martial Appeals Act 1968 s 34(4) (s 34(4), (5) added by the Armed Forces Act 1971 s 73(4), Sch 2 para 1(7); and substituted by the Armed Forces Act 1996 s 17(4)). Any reference under the Courts-Martial Appeals Act 1968 s 34(4) (as added and substituted) is to be treated as an appeal by the person convicted against sentence for all purposes except those of s 32 (as amended) (costs against appellant: see para 554 post): s 34(5) (as so added and amended). The effect of these provisions is that s 31 (as amended) (see para 554 post) (award of costs to a successful appellant other than one who succeeds only upon sentence) does apply to a convicted person whose case is the subject of a special reference, and costs can therefore be awarded to him if his conviction is quashed on such a reference. Section 33 (payment of witnesses' expenses), and s 33A (as added) (payment to an appellant not in custody of the expenses of any appearances made by him before the Courts-Martial Appeal Court) also apply: see para 554 post. A finding by a court-martial of not guilty by reason of insanity can be the subject of a special reference under s 34: s 34(3). On any such reference, the scope of the inquiry by the appeal court is regulated by the terms of the reference: *R v Swabey* [1972] 2 All ER 1094, [1972] 1 WLR 925, C-MAC.

Proceedings in the United Kingdom or elsewhere before the Courts-Martial Appeal Court are criminal proceedings to which the evidential provisions of the Police and Criminal Evidence Act 1984 Pts VII, VIII (ss 71-82) (as amended) apply: see ss 72(1), 82(1) (both as amended); and CIVIL PROCEDURE. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

If a conviction is quashed in a reference it is treated as reversed for the purposes of compensation for miscarriage of justice: Armed Forces Act 1991 s 10(5)(b).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

531 Special references to the [Court Martial] Appeal Court

TEXT AND NOTES--Courts-Martial (Appeals) Act 1968 s 34(1), (4) amended, s 34(3) repealed: Armed Forces Act 2006 Sch 8 para 36.

NOTE 6--Armed Forces Act 1991 s 10 repealed: Armed Forces Act 2006 Sch 17.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/ (iii) Right of Appeal by Leave to the Courts-Martial Appeal Court/532. Petition as condition precedent to exercise of right of appeal.

(iii) Right of Appeal by Leave to the Courts-Martial Appeal Court

532. Petition as condition precedent to exercise of right of appeal.

The right of appeal to the Courts-Martial Appeal Court¹ is not exercisable unless, within the period prescribed by rules of court², the person seeking relief³ presents to the Defence Council⁴ a petition praying that his conviction or sentence be quashed⁵, and until either the prescribed period⁶ (beginning with the day on which the petition is presented) expires or he is notified by the Defence Council that the petition has not been granted, whichever event first occurs⁷. The court has no power to extend the prescribed time for presenting any such petition to the Defence Council against conviction by a court-martial or for seeking such other relief as the Defence Council has power to grant⁸.

1 As to the right of appeal see para 530 ante.

2 The petition must be, save in the case of prisoners of war, presented within 28 days following the day on which sentence was passed: see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 6(1) (substituted by SI 1997/580; and amended by virtue of the Human Rights Act 1998 s 21(5)).

3 This will be either the convicted person, or (where that person is a civilian) his parent or guardian petitioning against a fine or compensation order awarded against him: see para 530 note 2 ante.

4 As to the Defence Council see para 2 ante. As to petitions and to whom they should be addressed see para 511 ante. Rules of court may specify in what circumstances a petition is to be treated as presented to the Defence Council: Courts-Martial (Appeals) Act 1968 s 8(4). As from a day to be appointed s 8(4) is amended, but not so as to affect its meaning, by the Armed Forces Act 2001 s 34, Sch 6 Pt 6 para 55(1), (4). At the date at which this volume states the law no such day had been appointed.

A petition is to be treated as having been presented to the Defence Council if it is presented by the appellant: (1) in the case of a navy court-martial, to the court administration officer; (2) in the case of an army court-martial, to the Director of Personal Services (Army); and (3) in the case of an air force court-martial, to the Deputy Director Personnel Management Agency (P1) (Royal Air Force): Courts-Martial Appeal Rules 1968, SI 1968/1071, r 3(1) (r 3 substituted by SI 1997/580). A petition is also to be treated as having been presented to the Defence Council if it is presented by the appellant: (a) where he is in custody or detention in any civil prison or institution, to the governor of the prison or institution; (b) where he is detained in naval detention quarters or in any military or air force establishment, to the commandant of the quarters or establishment; or (c) where he is a prisoner of war, to the officer commanding the prisoner of war camp or other place in which the prisoner or war is held: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 3(2) (as so substituted). A person to whom a petition is presented under heads (a)-(c) supra must immediately send it to whichever of the persons referred to in heads (1)-(3) supra is appropriate in the circumstances: r 3(3) (as so substituted). As to prisoners of war see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 433 et seq.

5 Courts-Martial (Appeals) Act 1968 s 8(2)(a) (amended by the Armed Forces Act 1971 s 73(4), Sch 2 para 1(2); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III). As from a day to be appointed the Courts-Martial (Appeals) Act 1968 s 8(2) is amended, but not so as to affect its meaning, by the Armed Forces Act 2001 Sch 6 Pt 6 para 55(1), (4). At the date at which this volume states the law no such day had been appointed. See note 7 infra.

6 The prescribed period is 40 days next following the day on which the petition was presented if the court-martial was held in the United Kingdom, and 60 days next following that day if the court-martial was held outside the United Kingdom: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 6(2). As to the meaning of 'United Kingdom' see para 20 note 1 ante.

7 Courts-Martial (Appeals) Act 1968 s 8(2)(b). As from a day to be appointed, s 8(2) is substituted by the Armed Forces Act 2001 s 34, Sch 6 Pt 6 para 55(1), so as to provide that the person's right of appeal is not exercisable: (1) unless he has presented a petition to the Defence Council under the Army Act 1955 s 113 (as

substituted and amended) or the Air Force Act 1955 s 113 (as substituted and amended) or the Naval Discipline Act 1957 s 70 (as substituted and amended) (review of findings and sentences of court-martial: see paras 473, 511 ante) within the period prescribed for the purposes of the provision in question; and (2) until either the prescribed period (beginning with the day on which the petition is presented) expires or he is notified by the reviewing authority of the result of its review under the provision in question, whichever first occurs. At the date at which this volume states the law no such day had been appointed.

8 *R v Lacey* [1956] 3 All ER 427, [1956] 1 WLR 1495, C-MAC. However, if a person presents a petition for the purposes of the Courts-Martial (Appeals) Act 1968 s 8(2)(a) (as amended) (see the text to note 5 supra), but fails to do so within the prescribed period and subsequently applies for leave to appeal, the Courts-Martial Appeal Court may direct that he be treated as not having thereby lost his right of appeal, if it thinks that there is a reasonable explanation of the failure and that it is in the interests of justice that he should be so treated: s 8(3).

As from a day to be appointed, s 8(3) is substituted by the Armed Forces Act 2001 Sch 6 Pt 6 para 55(3), so as to provide that the Courts-Martial Appeal Court may direct that a person who: (1) has not presented a petition as mentioned in the Courts-Martial (Appeals) Act 1968 s 8(2)(a) (as prospectively substituted: see note 7 supra); (2) has been notified by the reviewing authority of the result of its review under the Army Act 1955 s 113 (as substituted and amended), the Air Force Act 1955 s 113 (as substituted and amended) or the Naval Discipline Act 1957 s 70 (as substituted and amended) (see paras 473, 511 ante); and (3) has applied for leave to appeal, may appeal if it thinks that there is a reasonable explanation for his not having exercised his right to present a petition and that it is in the interests of justice that he should appeal.

A single judge of the court may exercise this power: Courts-Martial (Appeals) Act 1968 s 36(1)(a). As from a day to be appointed s 36(1)(a) is to be amended by the Armed Forces Act 2001 Sch 6 Pt 6 para 56. At the date at which this volume states the law no such day had been appointed. A judge of the court, exercising the powers of the court under the Courts-Martial (Appeals) Act 1968 s 36(1) (as amended) may sit wherever convenient: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8(1).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

532 Petition as condition precedent to exercise of right of appeal

TEXT AND NOTES--Courts-Martial (Appeals) Act 1968 s 8(2)-(4) repealed: Armed Forces Act 2006 Sch 8 para 7. SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTE 8--Courts-Martial (Appeals) Act 1968 s 36(1)(a) repealed: Armed Forces Act 2006 Sch 8 para 37.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/ (iii) Right of Appeal by Leave to the Courts-Martial Appeal Court/533. Application for leave to appeal.

533. Application for leave to appeal.

Leave to appeal to the Courts-Martial Appeal Court must not be given unless an application made by or on behalf of the appellant, in the prescribed form and specifying the grounds on which leave to appeal is sought¹, has been lodged, within the prescribed period², with the registrar of the court³. The court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not⁴. In considering whether or not to give leave to appeal, the court must have regard to any expression of opinion made by the Judge Advocate of Her Majesty's Fleet⁵ or the Judge Advocate General⁶ that the case is a fit one for appeal, and if any such expression is so made it may, without more, give leave to appeal⁷. If the court dismisses an application for leave to appeal, and considers it to have been frivolous or vexatious, it may order that the sentence of the court-martial is to begin to run from the day on which the application is dismissed⁸.

1 For the form and requirements of the application for leave to appeal see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 4(1), (2), (3), (5), Sch 1 Form 1 (r 4(1) substituted, and r 4(2) amended, by SI 1972/798; the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 4(3) Sch 1 both substituted by SI 1997/580; the Courts-Martial Appeal Rules 1968, SI 1968/1071, Sch 1 (as substituted) amended by virtue of the Human Rights Act 1998 s 21(5)). A notice of application for leave to appeal must specify: (1) any application to be made to the court for a declaration of incompatibility under the Human Rights Act 1998 s 4 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS); or (2) any issue for the court to decide which may lead to the court making such a declaration: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 4(1A) (r 4(1A), (1B) added by SI 2000/2228). Where the notice of application for leave to appeal includes an application or issue in accordance with the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 4(1A) (as added), a copy of the notice must be served by the appellant on the person to whom a petition may be presented under r 3(1) (as substituted) (see para 532 ante), whichever is appropriate in the circumstances: r 4(1B) (as so added).

2 The period within which application must be lodged is 28 days beginning with the earlier of the following: (1) the day on which the appellant is notified that his petition has not been granted; or (2) the forty-first day after presentation of a petition in the case of a conviction by a court-martial held in the United Kingdom, or the sixty-first such day if it was held outside the United Kingdom: *ibid* r 6(3)(b). As to the period in the case of protected prisoners of war see r 6(3) proviso. As to the meaning of 'United Kingdom' see para 20 note 1 ante.

3 Courts-Martial (Appeals) Act 1968 s 9(1), (2). Rules of court may provide for applications to be lodged with persons other than the registrar: see s 9(4). Where any application or notice is lodged with a person other than the registrar, that person has a duty to forward it to the registrar, together with certain information: see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 4(4). Where a person convicted by a court-martial held outside the United Kingdom duly presents a petition under the Courts-Martial (Appeals) Act 1968 s 8(2) (as amended) (see para 532 ante) and, before the expiration of the time for appealing, the Defence Council receives from him an application for leave to appeal accompanied by a request that the Council will forward the application to the registrar in the event of its being decided not to grant the petition, the Council must comply with the request: s 10(1), (2), (4). As to the Defence Council see para 2 ante. The convicted person's right of appeal under s 8 (as amended) (see para 532 ante) becomes exercisable (if it has not already done so) in the event of its being decided not to grant the petition: s 10(3). As to the exclusion of review of a finding or sentence where an application for leave to appeal to the Courts-Martial Appeal Court has been granted see paras 474, 512 ante.

4 *Ibid* s 9(3). For the form and requirements of the application to the court for an extension of time within which to make application for leave to appeal see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 7, Sch 1 Form 3. The court's powers to give leave to appeal or to extend the period within which an application for leave to appeal must be lodged may be exercised by any single judge of the court in the same manner, and subject to the same provisions, as they may be exercised by the court: Courts-Martial (Appeals) Act 1968 s 36(1)(b), (c). The registrar must notify the appellant of the decision of any such judge: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8(2). See also para 530 note 3 ante. The registrar may also exercise the power to extend the time within which notice of appeal or of application for leave to appeal may be given: Courts-Martial (Appeals) Act 1968 s 36A(1)(a) (s 36A added by the Armed Forces Act 1996 s 18). If the registrar refuses to

exercise his power in favour of the appellant, the appellant is entitled to have the application determined by a judge of the Courts-Martial Appeal Court: Courts-Martial (Appeals) Act 1968 s 36A(2) (as so added).

5 As to the Judge Advocate of Her Majesty's Fleet see para 445 ante.

6 As to the Judge Advocate General see para 446 ante.

7 Courts-Martial (Appeals) Act 1968 s 11(1).

8 Ibid s 11(2).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

533 Application for leave to appeal

TEXT AND NOTES--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTE 3--Courts-Martial (Appeals) Act 1968 s 10 repealed: Armed Forces Act 2006 Sch 8 para 8.

NOTE 4--1968 Act s 36(1) amended: Courts Act 2003 s 90, Sch 10; Armed Forces Act 2006 Sch 8 para 37. 1968 Act s 36A(1) amended: Courts Act 2003 s 90, Sch 10.

TEXT AND NOTE 5--Reference to the Judge Advocate of Her Majesty's Fleet omitted: 1968 Act s 11(1) (amended by the Armed Forces Act 2006 Sch 8 para 9).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/ (iii) Right of Appeal by Leave to the Courts-Martial Appeal Court/534. Appeals on behalf of deceased persons.

534. Appeals on behalf of deceased persons.

Where a person has died, any relevant appeal¹ which might have been begun by him had he remained alive may be begun by a person approved by the Courts-Martial Appeal Court and, where any relevant appeal was begun by him while he was alive, or is begun in relation to his case by an approved person, any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved².

Approval may only be given to the widow or widower of the dead person, a personal representative³ of the dead person or any other person appearing to the Courts-Martial Appeal Court to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of a relevant appeal relating to him⁴. An application for such approval may not be made after the end of the period of one year beginning with the date of death⁵. The power of the Courts-Martial Appeal Court to approve a person may be exercised by any judge of the Court in the same manner as by the Courts-Martial Appeal Court and subject to the same provisions; but if the judge refuses the application, the applicant is entitled to have the application determined by the Courts-Martial Appeal Court⁶.

1 'Relevant appeal' means an appeal under the Courts-Martial (Appeals) Act 1968 s 8 (as amended) (see paras 530, 532 ante), s 21 (as amended) (see para 545 post) or s 24 (as amended) (see para 546 post) or an appeal under s 39 from any decision of the Courts-Martial Appeal Court on an appeal under any of those provisions (see para 530 ante): s 48A(2) (s 48A added by the Armed Forces Act 1996 s 19).

2 Courts-Martial (Appeals) Act 1968 s 48A(1) (as added: see note 1 supra). Where the provisions of s 48A (as added) apply, any reference in the Courts-Martial (Appeals) Act 1968 to the appellant, where appropriate, are to be construed as being or including a reference to the person approved under s 48A (as added): s 48A(5) (as so added).

3 'Personal representative' means a person who is a personal representative within the meaning of the Administration of Estates Act 1925 s 55(1)(xi) (see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) para 4): Courts-Martial (Appeals) Act 1968 s 48A(7) (as added: see note 1 supra).

4 Ibid s 48A(3) (as added: see note 1 supra).

5 Ibid s 48A(4) (as added: see note 1 supra).

6 Ibid s 48A(6) (as added: see note 1 supra).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

534 Appeals on behalf of deceased persons

TEXT AND NOTES 1, 2--Courts-Martial (Appeals) Act 1968 s 48A(1) amended: Armed Forces Act 2006 Sch 8 para 46(2).

TEXT AND NOTE 3--Now refers to the widow, widower or surviving civil partner of the dead person: 1968 Act s 48A(3) (amended by the Civil Partnership Act 2004 Sch 26 para 33).

TEXT AND NOTE 4--Now refers to the Appeal Court: 1968 Act s 48A(3) (further amended by the Armed Forces Act 2006 Sch 8 para 46(3)).

TEXT AND NOTE 5--1968 Act s 48A(4) amended: Armed Forces Act 2006 Sch 8 para 46(4).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/535. Pre-appeal release.

(iv) Preparatory and Administrative Matters

535. Pre-appeal release.

At the date at which this volume states the law there is no power to release an accused pending appeal to the Courts-Martial Appeal Court; however, as from a day to be appointed¹ the Secretary of State² is empowered by order to make provision enabling a person who has been sentenced by a court-martial, a summary appeal court or a standing civilian court to be conditionally released from custody pending a determination of an appeal to the Courts-Martial Appeal Court³.

1 The Armed Forces Act 2001 s 30 is to be brought into force as from a day to be appointed by order under s 39(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 See the Armed Forces Act 2001 s 30 (not yet in force: see note 1 supra). In connection with the conditional release of persons sentenced by court-martial see para 442 ante; in connection with the conditional release of persons sentenced by a summary appeal court see para 371 ante; and in connection with the conditional release of persons sentenced by a standing civilian court see para 527 ante.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

535 Pre-appeal release

TEXT AND NOTES--2001 Act s 30 (amended by the Armed Forces Act 2006 Sch 16 para 195) now in force: SI 2006/2309. In exercise of his powers under the Armed Forces Act 2001 s 30, the Secretary of State has made the Armed Forces (Conditional Release from Custody) Order 2009, SI 2009/991, and the Court Martial Appeal Court (Bail) Order 2009, SI 2009/992.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/536. Duties of the registrar.

536. Duties of the registrar.

The registrar of the Courts-Martial Appeal Court must take all necessary steps for obtaining the determination of an appeal or application for leave to appeal and must obtain and lay before the court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial by which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application¹. He must furnish the necessary forms and instructions relating to applications for leave to appeal to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit², and every person in charge of such a place of confinement must cause the forms and instructions to be placed at the disposal of persons confined in that place who wish to apply for leave to appeal to the Courts-Martial Appeal Court, or from that court to the House of Lords³.

1 Courts-Martial (Appeals) Act 1968 s 50(1). On receipt of a notice of application for leave to appeal, or where a special reference is made to the court (see para 531 ante), the registrar must request the Judge Advocate General or, in the case of a naval court-martial, the Defence Council to furnish him with the proceedings of the court-martial and any petition presented by the appellant praying that his conviction (or, in the case of an application for leave to appeal against sentence, his sentence) be quashed: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 9(1) (amended by SI 1972/798). As to the Judge Advocate General see para 446 ante; and as to the Defence Council see para 2 ante. Although the rules do not expressly so state, it is evident that a petition against a finding of not guilty by reason of insanity or of unfitness to stand trial (see paras 461, 500, 506, 530 note 2 ante) must also be furnished to the registrar. As to the documents to be furnished to the registrar in response to his request see the Courts-Martial (Appeals) Act 1968 s 37 (amended by the Armed Forces Act 1996 s 35(2), Sch 7 Pt II). For the modification to the Courts-Martial (Appeals) Act 1968 s 37 (as amended) in relation to protected prisoners of war see s 56, Sch 3 para 3(d).

After an application is finally refused or abandoned or the appeal is determined or abandoned, the registrar must, subject to any order which the court may make, return the court-martial proceedings and any petition to the Judge Advocate General or, in the case of a naval court-martial, the Defence Council: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 9(2). A copy of any document which is required for the use of the court may be made by such person and in such manner as the registrar may direct (r 10(3)), and he must supply to the appellant or the Defence Council copies of any document in his possession required by the appellant or the Defence Council for the purposes of the appeal at charges fixed by him (or free of charge to an appellant granted legal aid, unless he considers any documents requested to be unnecessary for the purposes of the appeal), subject to any restrictions on grounds of security imposed by the Secretary of State subject to the court's power to direct that the material be disclosed (see rr 10(1), (2), 12). As to the Secretary of State see para 2 ante.

The registrar must keep a register of all cases in which he receives notice of an application for leave to appeal, and the register must be open for public inspection in such place and at such hours as the registrar, subject to the court's approval, may decide: r 16(1). He must also prepare a list of appeals and applications which the court may consider on the days on which the court sits, and publish it at such times and in such places and manner as, subject to the court's approval, he thinks convenient for giving due notice to any parties interested: r 16(2).

2 Courts-Martial (Appeals) Act 1968 s 50(2).

3 Ibid s 50(3). On application by the appellant or the Defence Council, or where he considers it necessary for the proper determination of the appeal or application, the registrar may, and must where the court so directs, obtain and keep available for use by the court any document or exhibit, and make them and the court-martial proceedings available for inspection by the appellant or the Defence Council pending the determination of the appeal or application: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 11(1). The court may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interests of justice, order the production to the registrar or before the court of any document, exhibit or other thing connected with the proceedings (r 11(2)), service of any such order being personal service unless the court otherwise directs (r 11(4)). These provisions

are, however, subject to any restrictions certified by the Secretary of State to be necessary for reasons of security (see r 12), and nothing in the Courts-Martial Appeal Rules 1968, SI 1968/1071 (as amended) affects any rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest (r 13). After the final refusal or abandonment of an application, or the determination or abandonment of an appeal, any document or exhibit must (subject to any order made by the court) be returned by the registrar to the person who produced it: r 11(3).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

536 Duties of the registrar

TEXT AND NOTES--Courts-Martial (Appeals) Act 1968 s 50 amended: Constitutional Reform Act 2005 Sch 9 para 17(10); Armed Forces Act 2006 Sch 8 para 47.

NOTES--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTE 1--Courts-Martial (Appeals) Act 1968 s 37 substituted: Armed Forces Act 2006 Sch 8 para 39.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/537. Defence to appeal.

537. Defence to appeal.

The duty to defend an appeal against a conviction by court-martial lies upon the Defence Council¹.

¹ Court-Martial (Appeals) Act 1968 s 38. As to the Defence Council see para 2 ante. The Defence Council must be represented by a lawyer with rights of audience under the Courts and Legal Services Act 1990 s 27(1) in the Criminal Division of the Court of Appeal (see LEGAL PROFESSIONS vol 65 (2008) PARA 497), by a barrister of the bar of Northern Ireland or by an advocate of the Scottish bar unless, where the Courts-Martial Appeal Court sits outside the United Kingdom, it gives leave for a person not so qualified to appear on the Defence Council's behalf: see the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 21 (substituted by SI 1997/580). As to the award of costs against the Defence Council (which are payable by the Secretary of State) or against an unsuccessful appellant or applicant see para 554 post. As to the meaning of 'United Kingdom' see para 20 note 1 ante. As to the Secretary of State see para 2 ante.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

537 Defence to appeal

TEXT AND NOTES--For 'Defence Council' read 'Director of Service Prosecutions': Courts-Martial (Appeals) Act 1968 s 38 (amended by the Armed Forces Act 2006 Sch 8 para 40). SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/538. Appellant or applicant in custody.

538. Appellant or applicant in custody.

An appellant or applicant to the Courts-Martial Appeal Court may only be present if he obtains leave¹. Rules or regulations² provide in what manner an appellant or applicant, when in custody, is to be taken to, kept in custody at and brought back from, any place at which he is entitled to be present for the purposes of his appeal or application, or any place to which the court may order him to be taken for the purpose of any of its proceedings³.

1 This applies both to the hearing of the appeal and to any proceedings preliminary or incidental to the appeal: see further para 542 post.

2 le made under the Prison Act 1952 s 47 (as amended) (or the corresponding legislation in Scotland or Northern Ireland) (see PRISONS vol 36(2) (Reissue) para 502); the Army Act 1955 s 122 (as amended); the Air Force Act 1955 s 122 (as amended); or the Naval Discipline Act 1957 s 82 (as amended) (see paras 479, 515 ante). See the Imprisonment and Detention (Army) Rules 1979, SI 1979/1456 (as amended); and the Imprisonment and Detention (Air Force) Rules 1980, SI 1980/2005 (as amended).

3 Courts-Martial (Appeals) Act 1968 s 52.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

538 Appellant or applicant in custody

TEXT AND NOTES--Courts-Martial (Appeals) Act 1968 s 52 amended: Armed Forces Act 2006 Sch 8 para 48.

NOTE 2--SI 1979/1456, SI 1980/2005 replaced: Service Custody and Service of Relevant Sentences Rules 2009, SI 2009/1096.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/539. Abandonment of appeal.

539. Abandonment of appeal.

At any time after he has applied for leave to appeal¹, an appellant may abandon his appeal by giving the registrar of the Courts-Martial Appeal Court notice of the abandonment². The court will not entertain an application for the withdrawal of a notice of abandonment unless there are shown to be exceptional circumstances which enable the court to say that the notice should be treated as a nullity³.

1 See para 533 ante.

2 Courts-Martial Appeal Rules 1968, SI 1968/1071, r 5(1). Notice of abandonment must be given in the prescribed form: see r 5(1), Sch 1 Form 2 (substituted by SI 1997/580).

3 Eg where there is a vital mistake of fact or fraud or, possibly, wrong advice from a legal adviser, but the categories are not closed. See *R v Condon* (1952) 36 Cr App Rep 130, C-MAC; *R v Caddy* [1959] 3 All ER 138n, [1959] 1 WLR 868, C-MAC; *R v Sutton* [1969] 1 All ER 928, [1969] 1 WLR 375, CA (bad legal advice). In these cases, the practice of the Court of Criminal Appeal (now the Criminal Division of the Court of Appeal) was followed: see *R v Medway* [1976] QB 779, [1976] 1 All ER 527, CA; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1876.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

539 Abandonment of appeal

TEXT AND NOTES 1, 2--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/540. Special powers of the appeal court in relation to evidence.

540. Special powers of the appeal court in relation to evidence.

The Courts-Martial Appeal Court may order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to it necessary for the determination of the case¹, and may order any witness who would have been a compellable witness at the trial (whether or not he was called at the trial) to attend for examination and be examined before the court². The court may also receive any evidence which was not adduced at the trial³. The court must, in considering whether to receive such evidence have regard, in particular to: (1) whether the evidence appears to be capable of belief; (2) whether the evidence may afford any ground for allowing the appeal; (3) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and (4) whether there is a reasonable explanation for the failure to adduce the evidence at the trial⁴.

The court may order any requisite steps to be taken to obtain from any member of the court-martial by which the appellant was tried, or from the person who officiated as judge advocate⁵ at the trial, a report giving his opinion on the case or on any point arising in it, or containing a statement as to any facts of which the ascertainment appears to the court to be material for determining the case⁶.

Evidence may, with the leave of the court⁷, be given through a live television link where the witness is in a country other than that in which the court is sitting⁸; and the evidence in chief of child witnesses, depending on the nature of the offence, may be given by video recording with cross-examination by live television link or in its entirety by television link⁹.

These and all the powers of the court must be exercised by it so far as it thinks necessary or expedient in the interest of justice, and the court may issue any warrants necessary for enforcing its orders or sentences¹⁰.

1 Courts-Martial (Appeals) Act 1968 s 28(1)(a). As to the registrar's duties in respect of the obtaining, and keeping available for use, of documents and exhibits, and the court's powers to give orders as to such matters, see para 536 ante. As to documentary evidence and its disclosure see CIVIL PROCEDURE vol 11 (2009) PARAS 538 et seq, 864 et seq.

2 Ibid s 28(1)(b). The power of the court to order witnesses to attend for examination may be exercised by any single judge or registrar of the court in the same manner as it may be exercised by the court and subject to the same provisions or restrictions: see ss 36(1)(f), 36A(1)(b) (added by the Armed Forces Act 1996 s 18). As to when a witness is compellable see CIVIL PROCEDURE vol 11 (2009) PARA 969; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1402. The court may order the examination of any witness whose attendance may be required under s 28(1)(b) to be conducted in the prescribed manner at a specified time and place, before the court itself or before a judge of the court or a specified person appointed by the court to take the examination: see s 28(4); and the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 14(3). An application for such an order may be made by the appellant or the Defence Council; it must be made by notice in writing to the registrar, and if made by the appellant it must be in the prescribed form: r 14(1), (2), Sch 1 Form 5. Subject to any restrictions on grounds of security (see r 12; and para 536 ante) and to any directions given by the court or a judge, the registrar must furnish the person appointed to act as examiner with any document, exhibit or other thing relating to the appeal, or copies of them (r 14(4)), and, at the request of the examiner, must serve a notice on the appellant and the Defence Council and, if the appellant is in custody, on the person in charge of the place where the appellant is detained, stating the day and time of examination (r 14(5)). As to the Defence Council see para 2 ante. For the purposes of the examination, which must be taken in deposition form and, unless otherwise ordered, conducted in private, the examiner has power to administer oaths, take affirmations and require answers to any question to which the examiner may lawfully require an answer: r 14(6), (7). Notice must be served on a witness personally, unless the court directs otherwise: r 14(8). For the form of any order, application, notice or caption required in respect of the examination of witnesses see r 14(2), (5), (7), Sch 1 Forms 5-7. The court may order any person properly attending to give evidence on an appeal, or in any

proceedings preliminary or incidental to an appeal (whether or not he gives evidence), to be paid, out of money provided by Parliament, such sums as appear to the court reasonably sufficient to compensate him for his expense, loss of time or trouble properly incurred in or incidental to his attendance: Courts-Martial (Appeals) Act 1968 s 33(1). This extends to a medical practitioner making a written report on an offender's medical condition: Criminal Justice Act 1967 s 32(2), (3) (s 32(2) amended by the Courts Act 1971 s 51(2), Sch 6 para 9(1); the Costs in Criminal Cases Act 1973 s 21(2), Sch 2; and the Prosecution of Offences Act 1985 s 31(5), (6), Sch 1 para 6, Sch 2; and the Criminal Justice Act 1967 s 32(3) amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 24). The amount of any expenses ordered to be paid must be ascertained as soon as practicable by the registrar: Courts-Martial (Appeals) Act 1968 s 33(2).

3 Ibid s 28(1)(c) (substituted by the Criminal Appeal Act 1995 s 29, Sch 2 para 5(3)(a)). The Courts-Martial (Appeals) Act 1968 s 28(1)(c) (as substituted) applies to any evidence of a witness (including the appellant) who is competent but not compellable: s 28(3) (amended by the Criminal Appeal Act 1995 Sch 2 para 5(3)(c)).

4 Courts-Martial (Appeals) Act 1968 s 28(2) (substituted by the Criminal Appeal Act 1995 Sch 2 para 5(3)(b)). As to the admission of fresh evidence on the hearing of an appeal by the Criminal Division of the Court of Appeal, which is governed by equivalent statutory provisions, see the Criminal Appeal Act 1968 s 23 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1866 et seq. See also *R v Kelly* [1965] 2 All ER 250, [1965] 1 WLR 730, C-MAC.

5 As to the judge advocate see paras 453, 484 ante.

6 Courts-Martial (Appeals) Act 1968 s 29(1). The court may not make an order under this provision in order to obtain a report from a member of a court-martial other than the president unless it also makes an order for the obtaining of a report from the president or is satisfied that to obtain a report from him is impracticable or would involve undue delay: s 29(2). As to the president of the court-martial see paras 449, 482 ante.

7 Ie under the Criminal Justice Act 1988 s 32(1) (modified by s 146, Sch 13 para 8; and by the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996, SI 1996/2592). As to the giving of evidence through television links see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1414 et seq.

8 See the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 14A(1), (2) (r 14A added by SI 1997/580). Notice of the application must be served on the registrar in writing stating the grounds of the application, the name of the witness, the country and place where it is proposed he will be when giving evidence and the name of any person who it is proposed should be available to answer any questions the court may put, before or after the evidence is given, including any questions about persons who are present when the evidence is given and any matters which may effect the giving of the evidence: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 14A(3), (4) (as so added). The application for evidence to be heard by television link may be made at the same time as the application to call the witness or at any time thereafter, but must be made not less than 14 days before the date fixed for the hearing of the appeal unless the court gives leave: r 14A(5) (as so added). The registrar must send a copy of the notice to the other parties to the appeal: r 14A(6) (as so added). An application is determined without a hearing unless the court otherwise directs, in which case the registrar must notify all parties of the details: see r 14A(7), (8).

9 See *ibid* rr 14B, 14C (both added by SI 1997/580). Evidence may be received by video link where the Criminal Justice Act 1988 s 32(2) (as amended) applies, namely where the witness is a child and the offence is one of those set out in that provision, or is to be cross-examined after a video recording of the evidence in chief has been admitted under s 32A (as added and amended). As to the detailed provisions relating to the applications for evidence to be given by children by video recording and television link see the Courts-Martial Appeal Rules 1968, SI 1968/1071, rr 14B, 14C (as so added).

10 Courts-Martial (Appeals) Act 1968 s 1(3).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

540 Special powers of the appeal court in relation to evidence

TEXT AND NOTES--As to the power of the Court Martial Appeal Court to direct the Criminal Cases Review Commission to investigate and report to it on any matter, see the Courts-Martial (Appeals) Act 1968 s 29A (added by the Armed Forces Act 2006 Sch 11 para 1). As to the Criminal Cases Review Commission see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2028 et seq. See also the Court Martial Appeal Court (Evidence) Order 2009, SI 2009/2569.

NOTES--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

TEXT AND NOTES 1-4--Courts-Martial (Appeals) Act 1968 s 28 further amended: Armed Forces Act 2006 Sch 8 para 31; Criminal Justice and Immigration Act 2008 Sch 25 para 7.

NOTE 2--Courts-Martial (Appeals) Act 1968 s 32 repealed: Armed Forces Act 2006 Sch 17. The Courts-Martial (Appeals) Act 1968 s 33(1) applies in relation to a registered medical practitioner who makes a written report to the Appeal Court in pursuance of a request made by the court as it applies in relation to a person who is called to give evidence at the instance of the court: s 33(1A) (added by the Armed Forces Act 2006 Sch 8 para 35).

TEXT AND NOTES 5, 6--Courts-Martial (Appeals) Act 1968 s 29(1) amended, s 29(2) repealed: Armed Forces Act 2006 Sch 8 para 32.

NOTE 7--SI 1996/2592 revoked: SI 2006/2890.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(iv) Preparatory and Administrative Matters/541. Reference of questions for inquiry by special commissioners; appointment of assessors.

541. Reference of questions for inquiry by special commissioners; appointment of assessors.

Where any question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or local investigation¹, which cannot in the opinion of the Courts-Martial Appeal Court conveniently be conducted before the court, it may order the reference of the question in the prescribed manner² for inquiry and report to a special commissioner appointed by the court, and may act upon the report of that commissioner so far as it thinks fit to adopt it³.

Similarly, the court may appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that special knowledge is required for the proper determination of the case⁴.

1 See *R v Calvert* (1953) Times, 12 May, C-MAC.

2 The question to be referred, and the person to whom as special commissioner it is to be referred, must be specified in the order, which may require the special commissioner to make interim reports to the court from time to time: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 15(1). The court may order copies of any report made by a special commissioner to be furnished to the appellant and the Defence Council: r 15(2). Cf *R v Calvert* (1953) Times, 12 May, C-MAC. As to the Defence Council see para 2 ante.

3 Courts-Martial (Appeals) Act 1968 s 30(1). The Lord Chancellor, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, may authorise the payment to a special commissioner, out of money provided by Parliament, of such remuneration and travelling and subsistence allowances as may be so prescribed: s 30(3), (4). At the date at which this volume states the law no such regulations had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

4 Ibid s 30(2). The Lord Chancellor has power to provide by regulations for the remuneration of any person appointed to act as an assessor to the court (see s 30(3), (4)), but has not exercised this power (see note 3 supra).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

541 Reference of questions for inquiry by special commissioners; appointment of assessors

NOTE 2--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTES 3, 4--The Lord Chancellor's functions under the 1968 Act s 30 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(v) The Hearing and Disposal of the Appeal/542. Presence of appellant at appeal.

(v) The Hearing and Disposal of the Appeal

542. Presence of appellant at appeal.

An appellant is not entitled to be present at the hearing of an appeal to the Courts-Martial Appeal Court or at any proceedings preliminary or incidental to such an appeal except where the court gives him leave to be present¹, and any power of the court to pass a sentence may be exercised notwithstanding his absence². If he so desires, instead of presenting his case orally, an appellant may present it in writing in the prescribed form³.

¹ The court usually grants leave for an appellant to be present in the same circumstances as it would before the Court of Appeal (Criminal Division): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1874. The court's power to allow an appellant to be present at any proceedings under the Courts-Martial (Appeals) Act 1968 Pt II (ss 8-38) (as amended) may be exercised by any judge of the court in the same manner as it may be exercised by the court, and subject to the same provisions: s 36(1)(e). As to the rights of the appellant if the single judge refuses his application to be allowed to be present see para 530 note 3 ante. Where an appellant is in custody and has obtained leave to be present at the hearing and determination of his application or appeal, or at any examination or investigation, or at any stage of it, the registrar must notify the appellant, the person in charge of the place where the appellant is detained, the Secretary of State for Defence (where the appellant is in service custody) and the appropriate minister responsible for prisons (where the appellant is detained in a civil prison in the United Kingdom), of the probable date of the proceedings in question: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 17 (amended by SI 1997/580). As to the Secretary of State see para 2 ante.

² Courts-Martial (Appeals) Act 1968 s 27.

³ Ibid s 26. No form is expressly prescribed by the rules for this purpose, but the Courts-Martial Appeal Rules 1968, SI 1968/1071, Sch 1 Form 1 (as substituted and amended: see para 533 ante) should be used.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

542 Presence of appellant at appeal

NOTES--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

TEXT AND NOTES 1, 2--Courts-Martial (Appeals) Act 1968 s 27 substituted: Armed Forces Act 2006 Sch 8 para 30.

NOTE 1--SI 1968/1071 r 17 further amended: SI 2007/2128.

TEXT AND NOTE 3--Courts-Martial (Appeals) Act 1968 s 26 repealed: Armed Forces Act 2006 Sch 8 para 29.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(v) The Hearing and Disposal of the Appeal/543. Determination of appeals against conviction in ordinary cases.

543. Determination of appeals against conviction in ordinary cases.

The proceedings before the Courts-Martial Appeal Court are in most respects identical to a hearing before the Court of Appeal (Criminal Division)¹. On determining an appeal, the Courts-Martial Appeal Court normally delivers only one judgement². The court must allow an appeal, on the same basis as the Court of Appeal (Criminal Division), if it thinks that the conviction is unsafe³. In any other case the court must dismiss the appeal⁴. If the court allows an appeal against conviction, it must quash the conviction⁵.

On the determination of any appeal to the Courts-Martial Appeal Court or to the House of Lords or of any application relating to an appeal, the registrar of the court is required (unless it appears to him unnecessary to do so) to give written notice of the determination to the appellant, the respondent⁶ and, where the appellant is in custody, to the person in charge of the place where he is detained⁷. In general⁸, where the conviction of a person by court-martial for an offence has been quashed, he is not liable to be tried again for that offence by a court-martial or by any other court⁹.

An appeal against conviction and sentence or against a finding of not guilty by reason of insanity or that the accused is unfit to plead may be commenced or continued on behalf of a deceased person by a person approved by the court¹⁰.

1 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1856 et seq.

2 In this respect the court follows the normal practice of the Criminal Division of the Court of Appeal: *R v Houghton* (1952) 36 Cr App Rep 98 at 103-104, C-MAC, per Lord Goddard CJ. See also the Supreme Court Act 1981 s 59; and COURTS vol 10 (Reissue) para 636.

3 Courts-Martial (Appeals) Act 1968 s 12(1)(a) (s 12(1) substituted by the Criminal Appeal Act 1995 s 29(1), Sch 2 para 5(1), (2)). As to the principles to be applied by the court see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1877 et seq.

4 Courts-Martial (Appeals) Act 1968 s 12(1)(b) (as substituted: see note 3 supra).

5 Ibid s 12(2). On the quashing of a conviction, the court's power to authorise a new trial may come into operation: see para 549 post.

6 I.e. the Defence Council (see *ibid* s 38; and para 537 ante) on whose behalf the person to receive the notice is the Secretary of State. If the appeal is from the Courts-Martial Appeal Court to the House of Lords, however, the respondent may be either the Defence Council or the original appellant to the Courts-Martial Appeal Court. As to the Defence Council, and as to the Secretary of State, see para 2 ante.

7 Courts-Martial Appeal Rules 1968, SI 1968/1071, r 19(1). In the case of a declaration of incompatibility (see para 547 post), the declaration must be served on all the parties to the proceedings and, where no minister has been joined as a party, a representative of the Crown from the list in the Crown Proceedings Act 1947 s 17(1) (as amended) (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 17(1) (Reissue) para 119) or the Treasury Solicitor: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 19(1A) (added by SI 2000/2228). A copy of a notice sent by the registrar to a protected prisoner of war must be sent to the protecting power: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 19(3). As to prisoners of war see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 433 et seq.

8 I.e. except as provided by the Courts-Martial (Appeals) Act 1968: see ss 18-20 (ss 19, 20 as amended); and para 549 post. As to the power to continue the detention of a person whose retrial is authorised where, immediately before the date of the authorisation, he was liable to be detained under mental health legislation see para 549 note 6 post.

9 Ibid s 18.

10 See ibid s 48A (as added); and para 534 ante.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

543 Determination of appeals against conviction in ordinary cases

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTE 3--Courts-Martial (Appeals) Act 1968 s 12(1)(a) amended: Armed Forces Act 2006 Sch 8 para 10(a).

TEXT AND NOTE 5--Courts-Martial (Appeals) Act 1968 s 12(3) added: Armed Forces Act 2006 Sch 8 para 10(b).

TEXT AND NOTES 6, 7--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(v) The Hearing and Disposal of the Appeal/544. Powers of the court on appeals against conviction in special cases.

544. Powers of the court on appeals against conviction in special cases.

Where it appears to the Courts-Martial Appeal Court, on an appeal against conviction, that an appellant, although not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, and where the sentence passed by the court-martial on the appellant was not warranted by the relevant service Act¹ for the offence of which he was convicted on the other charge, the court must pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence so warranted as it thinks proper².

Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence³, and it appears to the Courts-Martial Appeal Court, on an appeal against conviction, that the court-martial must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence warranted by the relevant service Act for that other offence, but not a sentence of greater severity⁴.

Where an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Courts-Martial Appeal Court, on an appeal against conviction, that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment, or where an appellant has been convicted of an offence and it appears to the court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations, the court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations, and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence warranted by the relevant service Act for the offence specified or involved in the substituted finding, but not a sentence of greater severity⁵.

The term of any sentence passed by the Courts-Martial Appeal Court under any of the provisions described above⁶ begins to run from the time from which it would have begun to run if passed in the proceedings from which the appeal was brought, unless the court otherwise directs⁷.

Where, on an appeal against conviction, the Courts-Martial Appeal Court is of opinion either that the proper finding would have been one of not guilty by reason of insanity⁸, or that the case is not one where there should have been a finding of not guilty but that there should have been a finding that the accused was unfit to stand his trial⁹, the court must order the appellant to be kept in safe custody under the relevant service Act¹⁰, in like manner as on a finding of not guilty by reason of insanity, or of unfitness to stand trial, by the court-martial by which the appellant was convicted¹¹.

1 'The relevant service Act' means, in relation to an appellant, the Act under which he was tried by court-martial, ie the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957: Courts-Martial (Appeals)

Act 1968 s 57(2). A reference to a royal warrant is substituted in the case of protected prisoners of war: see s 56, Sch 3 para 3(a). As to prisoners of war see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 433 et seq.

2 Ibid s 13 (amended by the Armed Forces Act 1971 s 73(4), Sch 2 para 1(1), (3)). For instance, if the appellant was found guilty of desertion under the Army Act 1955 s 37(1) (as substituted) and of malingering under s 42(1)(b) and sentenced to imprisonment for three years, and the Courts-Martial Appeal Court quashed the conviction for desertion but upheld that for malingering, it would have to substitute a sentence of imprisonment for two years or a less punishment as that is the maximum punishment for malingering: see para 405 ante.

3 As to the power to convict of an offence other than that charged see para 507 note 4 ante.

4 Courts-Martial (Appeals) Act 1968 s 14 (amended by the Armed Forces Act 1971 Sch 2 para 1(1), (3)).

5 Courts-Martial (Appeals) Act 1968 s 15 (amended by the Armed Forces Act 1971 Sch 2 para 1(1), (3)).

6 Ie under the Courts-Martial (Appeals) Act 1968 s 13, s 14 or s 15 (all as amended): see the text and notes 1-5 supra.

7 Ibid s 17(1) (amended by the Armed Forces Act 1971 Sch 2 para 1(5)). If passed on an appeal against conviction by, or the sentence of, a court-martial under any of the three service Acts the sentence is deemed to be a sentence passed by such a court-martial: Courts-Martial (Appeals) Act 1968 s 17(2) (amended by the Armed Forces Act 1971 Sch 2 para 1(5); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt II). As to the modification of this provision in relation to prisoners of war see s 56, Sch 3 para 3(c). As to prisoners of war see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 433 et seq. The exercise of the power conferred by the Courts-Martial (Appeals) Act 1968 s 13, s 14, s 15 (all as amended), s 16A (as added) (see para 548 post) in relation to an order under the Army Act 1955 s 209, Sch 5A (as added and amended), the Air Force Act 1955 s 209, Sch 5A (as added and amended), or the Naval Discipline Act 1957 s 118, Sch 4A (as added and amended) (powers of court on trial of civilians: see para 430 et seq ante) is subject to the restrictions contained in the Army Act 1955 Sch 5A para 15 (as added and amended), the Air Force Act 1955 Sch 5A para 15 (as added and amended) and the Naval Discipline Act 1957 Sch 4A para 15 (as added and amended) (see para 430 ante): Courts-Martial (Appeals) Act 1968 s 17A (added by the Armed Forces Act 1976 s 22(5), Sch 9 para 17; and substituted by the Armed Forces Act 1996 s 17(3)).

8 As to a finding of insanity see para 506 ante.

9 As to unfitness to plead see paras 461, 500 ante.

10 Ie the Army Act 1955 s 116, the Air Force Act 1955 s 116, or the Naval Discipline Act 1957 s 63 (all as amended; prospectively substituted) (see paras 460, 461, 500, 506 ante): see the Courts-Martial (Appeals) Act 1968 s 16(3). As to the prospective substitution of s 16 see note 11 infra. A reference to a royal warrant is substituted in relation to protected prisoners of war: see Sch 3 para 3(b). As to the procedure for detaining persons ordered to be kept in custody under these provisions see paras 506-507 ante.

11 Ibid s 16(1), (2) (s 16(1) amended by the Armed Forces Act 1971 Sch 2 para 1(4)). As from a day to be appointed, the Courts-Martial (Appeals) Act 1968 s 16 is substituted by the Armed Forces Act 1996 s 8, Sch 2 para 6, so as to provide that where, on an appeal against conviction, the Courts-Martial Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, is of the opinion: (1) that the proper finding would have been one of not guilty by reason of insanity; or (2) that the case is not one where there should have been a finding of not guilty, but that there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him, then the court must make in respect of the appellant (a) an admission order; (b) a guardianship order; (c) a supervision and treatment order; or (d) an order discharging him absolutely, as it thinks most suitable in all the circumstances of the case. The court may not make an order under head (b), (c) or (d) supra if the offence to which the appeal relates is an offence the sentence for which is fixed by law. An order under head (a), (b) or (c) supra is to be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the court may direct, and the appropriate mental health legislation applies accordingly with such modifications as may be prescribed by regulations made by the Secretary of State. The provisions of, or made under, the relevant service Act in relation to admission orders, guardianship orders and supervision and treatment orders apply to the court as if references to a court-martial were references to the Courts-Martial Appeal Court, references to the accused were references to the appellant, and with such other modifications as may be prescribed by regulations made by the Secretary of State. The power of the Secretary of State to make regulations is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament. As to the Secretary of State see para 2 ante. At the date at which this volume states the law no such day had been appointed.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

544 Powers of the court on appeals against conviction in special cases

TEXT AND NOTES 1, 2--Courts-Martial (Appeals) Act 1968 s 13 substituted: Armed Forces Act 2006 Sch 8 para 11.

NOTE 1--Courts-Martial (Appeals) Act 1968 s 57(2) repealed: Armed Forces Act 2006 Sch 8 para 51. Courts-Martial (Appeals) Act 1968 Sch 3 para 3(a) amended: Domestic Violence, Crime and Victims Act 2004 s 26, Sch 3 paras 6, 15.

TEXT AND NOTES 3, 4--Courts-Martial (Appeals) Act 1968 s 14 further amended: Armed Forces Act 2006 Sch 8 para 12.

TEXT AND NOTE 4--The following provision applies where (1) an appellant has been convicted of an offence to which he pleaded guilty; (2) if he had not so pleaded, he could lawfully have pleaded, or been found, guilty of some other offence; and (3) it appears to the Appeal Court on an appeal against conviction that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of that other offence: Courts-Martial (Appeals) Act 1968 s 14A(1) (s 14A added by the Criminal Justice Act 2003 s 318(1), (3)). The Appeal Court may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence, and may pass on the appellant, in substitution for the sentence passed on him by the Court Martial, any sentence that (a) they think appropriate; (b) is a sentence that the Court Martial would have had power to pass in respect of that other offence; and (c) is not more severe than the sentence passed by the Court Martial: Courts-Martial (Appeals) Act 1968 s 14A(2) (s 14A as added; s 14A(2) amended by the Armed Forces Act 2006 Sch 8 para 13).

TEXT AND NOTE 5--Courts-Martial (Appeals) Act 1968 s 15 repealed: Armed Forces Act 2006 Sch 8 para 14.

TEXT AND NOTES 6, 7--Courts-Martial (Appeals) Act 1968 s 17(1) substituted, s 17(2) repealed: Armed Forces Act 2006 Sch 8 para 17.

NOTE 7--Courts-Martial (Appeals) Act 1968 s 17A repealed: Armed Forces Act 2006 Sch 8 para 18.

NOTE 10--1968 Act Sch 3 para 3(b) repealed: 2004 Act Sch 3 paras 6, 15.

NOTE 11--Armed Forces Act 1996 s 8, Sch 2 repealed: 2004 Act s 58(2), Sch 11. Prospective substitution of 1968 Act s 16 now made by 2004 Act s 26, Sch 3 paras 6, 7; amended by Armed Forces Act 2006 Sch 8 para 15; Criminal Justice and Immigration Act 2008 Sch 25 para 3, Sch 28 Pt 3. Now, where, on an appeal against conviction, the Court Martial Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of the opinion: (1) that the proper finding would have been one of not guilty by reason of insanity; or (2) that the case is not one where there should have been a finding of not guilty, but that there

should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him, then the court must instead of allowing or dismissing the appeal, substitute for the finding appealed against (a) a finding of not guilty by reason of insanity; or (b) findings that the appellant was unfit to stand trial and that he did the act or made the omission charged against him: 1968 Act s 16(1), (1A) (as so substituted and amended). The Armed Forces Act 2006 ss 169(2)-(5), 170, and Sch 4 (see PARA 519A.3) apply (with any necessary modifications) in relation to the Appeal Court as they apply in relation to the Court Martial in a case in which s 169 applies: 1968 Act s 16(2) (as substituted). The Armed Forces Act 2006 s 172 (meaning of 'duly approved' etc) (see PARA 519A.3) applies for the purposes of this provision (and references there to the defendant are to be read as references to the appellant): 1968 Act s 16(3). In relation to protected prisoners of war, the provisions of a royal warrant apply, with any necessary modifications, in relation to the Court Martial Appeal Court as they apply to a court martial: see Sch 3 para 3A (added by the 2004 Act s 26, Sch 3 paras 6, 15).

As to the effect of interim hospital orders see Courts-Martial (Appeals) Act 1968 s 35A (added by Criminal Justice and Immigration Act 2008 Sch 25 para 5). See further Courts-Martial (Appeals) Act 1968 s 36(1)(ha) (added by Criminal Justice and Immigration Act 2008 Sch 25 para 6).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(v) The Hearing and Disposal of the Appeal/545. Appeal against finding of not guilty by reason of insanity.

545. Appeal against finding of not guilty by reason of insanity.

A person who has been tried by court-martial for an offence and been found not guilty by reason of insanity may, with the leave of the Courts-Martial Appeal Court, appeal to that court against that finding¹. Certain provisions of the Courts-Martial (Appeals) Act 1968² apply in relation to any such appeal as they apply in relation to an appeal against conviction³.

Where such an appeal is allowed, and the ground, or one of the grounds, for allowing it is that the finding as to the appellant's insanity ought not to stand, then if the court is of opinion that the proper finding would have been one of guilty of the offence charged or of any other offence of which the court-martial could have found the appellant guilty, it must substitute for the finding of the court-martial a finding of guilty of that offence⁴. Otherwise, where such an appeal is allowed, a finding of not guilty must be substituted⁵. Where an appeal against a finding of not guilty by reason of insanity would fall to be allowed, and none of the grounds for allowing it relates to the question of the insanity of the appellant, then if the court is of opinion that but for the appellant's insanity the proper finding would have been that he was guilty of an offence other than that with which he was charged it may dismiss the appeal⁶.

Where, on an appeal by a person who, in pursuance of a finding of not guilty by reason of insanity, is detained under the Mental Health Act 1983⁷, the Courts-Martial Appeal Court substitutes a finding of not guilty, then if it is of opinion that the person is suffering from mental disorder of a nature or degree warranting his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period, and that he ought to be so detained in the interests of his own health or safety or for the protection of other persons, it must make an order for his continued detention under that Act⁸.

1 Courts-Martial (Appeals) Act 1968 s 21(1). As to applications to the Courts-Martial Appeal Court for leave to appeal see para 533 ante. As to a finding of not guilty by reason of insanity see paras 460, 506 ante.

2 *Ibid* Pt II (ss 8-38) (as amended), except ss 13-16 (as amended) (see para 544 ante). The provisions in question apply to appeals from findings of not guilty by reason of insanity, with the necessary adaptations of references to a person convicted or to conviction: s 21(1).

As from a day to be appointed, s 21(1) is amended by the Armed Forces Act 1996 s 8, Sch 2 para 7, so as also to exclude the Courts-Martial (Appeals) Act 1968 s 8(2) (as prospectively substituted) (see para 532 ante). At the date at which this volume states the law no such day had been appointed.

3 *Ibid* s 21(1) (as prospectively amended: see note 2 supra).

4 *Ibid* s 22(1), (2). On substituting a finding of guilty of an offence, the Courts-Martial Appeal Court has the like sentencing powers and other powers as the court-martial which tried the appellant would have had on the like finding of guilty, and s 17 (as amended) (which relates to the commencement of the running of certain substituted sentences passed by the court and their effect for the purposes of the service discipline Act applicable to the case: see para 544 ante) applies as in the case of those substituted sentences: Courts-Martial (Appeals) Act 1968 s 22(3). These provisions meet a case in which the court is of the opinion that the appellant should not have been found to be excused from criminal liability by reason of insanity and that his guilt of the offence charged, or of some other offence of which the court-martial could have found him guilty, was established at the trial.

5 *Ibid* s 22(4). As from a day to be appointed, this provision is amended by the Armed Forces Act 1996 Sch 2 para 8, so as to provide that it is subject to the Courts-Martial (Appeals) Act 1968 s 23 (prospectively substituted) (see the text and note 8 infra).

The provisions of s 22(4) meet a case where the court is of opinion that the appellant should not have been found to be excused from criminal liability by reason of insanity, but also that he could not properly have been found guilty of any offence, by virtue of s 12(1) (as amended) (see para 543 ante), applied by s 21(1).

6 Ibid s 21(2). This provides for a case where the appeal would otherwise be allowed by virtue of s 12(1) (see para 543 ante), not because the finding as to the insanity of the appellant was wrong but, for instance, because the offence charged was not satisfactorily proved. In such a case, if the court is of the opinion that but for the appellant's insanity it would have been proper to find him guilty of an offence other than that which was charged, it may dismiss the appeal, so that the finding of not guilty by reason of insanity stands; this meets the justice of the case.

7 Ie under the Mental Health Act 1983 s 46 (see MENTAL HEALTH vol 30(2) (Reissue) para 499).

8 Courts-Martial (Appeals) Act 1968 s 23(1), (2) (amended by the Mental Health (Amendment) Act 1982 s 65(1), Sch 3 para 43(a); and the Mental Health Act 1983 s 148(1), Sch 4 para 24). Such an order is sufficient authority for the person's detention, and the Mental Health Act 1983 applies as if on the date of the order he had been admitted to hospital in pursuance of an application duly made under that Act (ie in England and Wales, an application for admission for assessment): Courts-Martial (Appeals) Act 1968 s 23(3) (amended by the Mental Health (Amendment) Act 1982 Sch 3 para 43; and by the Mental Health (Northern Ireland) (Consequential Amendments) Order 1986, SI 1986/596, art 6).

As from a day to be appointed, the Courts-Martial (Appeals) Act 1968 s 23 is substituted by the Armed Forces Act 1996 Sch 2 para 9, so as to provide that where, on an appeal under the Courts-Martial (Appeals) Act 1968 s 21 (as amended), the Courts-Martial Appeal Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, is of opinion that: (1) the case is not one where there should have been a finding of not guilty; but (2) there should have been findings that the accused was unfit to stand trial and that he did the act or made the omission charged against him, then the court must make in respect of the appellant: (a) an admission order; (b) a guardianship order; (c) a supervision and treatment order; or (d) an order discharging him absolutely, as it thinks most suitable in all the circumstances of the case. The court may not make an order under head (b), (c) or (d) supra if the offence to which the appeal relates is an offence the sentence for which is fixed by law. An order under head (a), (b) or (c) supra is to be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the Courts-Martial Appeal Court may direct, and the appropriate mental health legislation applies accordingly with such modifications as may be prescribed by regulations made by the Secretary of State. The provisions of, or made under, the relevant service Act in relation to admission orders, guardianship orders and supervision and treatment orders apply to the court as if references to a court-martial were references to the Courts-Martial Appeal Court, references to the accused were references to the appellant, and with such other modifications as may be prescribed by regulations made by the Secretary of State. The power of the Secretary of State to make regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Where, in accordance with s 22(4) (as prospectively amended) (see note 5 supra), the Courts-Martial Appeal Court substitutes a finding of not guilty and the court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, is of the opinion: (i) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and (ii) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons, the court, in the case of an appellant detained pursuant to an admission order made by a court-martial, must make an order for his continued detention and, in any other case, must make an order that the appellant be admitted for assessment, in accordance with regulations made by the Secretary of State, to such hospital as may be specified by the Secretary of State: s 23A(1), (2) (s 23A prospectively added by the Armed Forces Act 1996 Sch 2 para 9). Such an order is to be treated as if it had been made by a civil court in England and Wales, Scotland or Northern Ireland, as the court may direct, and the appropriate mental health legislation applies accordingly with such modifications as may be prescribed by regulations made by the Secretary of State: Courts-Martial (Appeals) Act 1968 s 23A(3) (as so prospectively added). The power of the Secretary of State to make regulations is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 23A(4) (as so prospectively added). As to the Secretary of State see para 2 ante. At the date at which this volume states the law no day had been appointed for these provisions to come into force.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

545 Appeal against finding of not guilty by reason of insanity

TEXT AND NOTES 1-3, 6--Courts-Martial (Appeals) Act 1968 s 21(1) further amended, s 21(2) amended, s 21(1A), (1B) added: Armed Forces Act 2006 Sch 8 para 22.

NOTES 2, 5, 8--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 s 58(2), Sch 11. Prospective amendment to the 1968 s 21(1) by the 2004 Act s 26, Sch 3 paras 6, 8, 10.

TEXT AND NOTES 4, 5--Courts-Martial (Appeals) Act 1968 s 22(2), (3) amended, s 22(3A), (3B), (4). (5) substituted for s 22(4): Armed Forces Act 2006 Sch 8 para 23.

TEXT AND NOTES 7, 8--Courts-Martial (Appeals) Act 1968 s 23 repealed: Armed Forces Act 2006 Sch 8 para 24.

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546. Appeal against finding of unfitness to plead.

A person found by a court-martial to be unfit to stand his trial may, with the leave of the Courts-Martial Appeal Court, appeal to that court against the finding¹. Certain provisions of the Courts-Martial (Appeals) Act 1968² apply in relation to any such appeal as they apply in relation to an appeal against conviction³.

Where the question whether the accused was unfit to stand his trial was determined by the court-martial at a time later than on arraignment (or, at a naval court-martial, later than on the commencement of the trial)⁴, the appeal may be allowed (notwithstanding that the finding was properly come to) if the court is of opinion that the case is one in which the court-martial should before that time have come to a finding of not guilty⁵. In that event the court must substitute a finding of not guilty, but not a finding of not guilty by reason of insanity, and the appellant is not then liable to be tried by a court-martial or by any other court for the offence with which he was charged⁶. Where, however, the appeal is allowed and the court does not substitute a finding of not guilty, the appellant may be tried accordingly for the offence with which he was originally charged⁷.

¹ Courts-Martial (Appeals) Act 1968 s 24(1). As from a day to be appointed, s 24(1) is amended by the Armed Forces Act 1996 s 8, Sch 2 para 10, so as to provide that a person found by a court-martial to be unfit to stand trial and to have done the act or made the omission charged against him may, with the leave of the court, appeal to the court against either or both of those findings.

² The Courts-Martial (Appeals) Act 1968 Pt II (ss 8-38) (as amended), except ss 13-16 (as amended). The provisions in question apply to appeals from findings of unfitness to stand trial, with the necessary adaptations of references to a person convicted or to conviction: s 24(2).

As from a day to be appointed, s 24(2) is amended by the Armed Forces Act 1996 Sch 2 para 10, so as also to exclude the Courts-Martial (Appeals) Act 1968 s 8(2) (as prospectively substituted) (see para 532 ante). At the date at which this volume states the law no such day had been appointed.

³ Ibid s 24(2).

⁴ As to the procedure on arraignment, its purpose and its effect, see para 500 ante. As to the naval procedure see para 459 ante.

⁵ Courts-Martial (Appeals) Act 1968 s 25(1), (2). These provisions meet the case where, due to the postponement of the determination by the court-martial of the question of the fitness of the accused to plead, the court-martial heard evidence which should have led it to the conclusion that (irrespective of his fitness to plead) he was not guilty of the offence or offences charged, whereupon he should have been so found without the question of his fitness to plead being decided, and he would then have been protected from retrial.

As from a day to be appointed, s 25 is substituted by the Armed Forces Act 1996 s 8, Sch 2 para 11, so as to provide that where the court allows an appeal against a finding that the appellant is unfit to stand trial: (1) the appellant may be tried accordingly for the offence with which he was charged; and (2) the court may make such orders as appear to it necessary or expedient pending any such trial for the custody, release or continued detention of the appellant. Where, in any other case, the court allows an appeal against a finding that the appellant did the act or made the omission charged against him, the court, in addition to quashing the finding, must direct a finding of not guilty to be recorded (but not a finding of not guilty by reason of insanity). At the date at which this volume states the law no such day had been appointed.

⁶ Courts-Martial (Appeals) Act 1968 s 25(3). As to the prospective substitution of s 25 see note 5 supra.

⁷ Ibid s 25(4). Once the finding of the unfitness of the appellant to plead has been set aside, without a finding of not guilty of the offence or offences charged being substituted, there is no reason why he should not be called upon to plead to the charge or charges and to stand his trial, and this provision makes that possible. If

the appellant is detained under mental health legislation (see para 545 ante), the court may make such order as appears to it necessary or expedient for his continued detention pending his trial: s 25(4). As to the prospective substitution of s 25 see note 5 supra.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

546 Appeal against finding of unfitness to plead

TEXT AND NOTES 1-3--Courts-Martial (Appeals) Act 1968 s 24(1) further amended, s 24(2) repealed: Armed Forces Act 2006 Sch 8 para 25.

NOTES 1, 5--Armed Forces Act 1996 s 8, Sch 2 repealed: Domestic Violence, Crime and Victims Act 2004 Sch 11. The Courts-Martial (Appeals) Act 1968 s 24, as prospectively amended, and s 25, as prospectively substituted by the 1996 Act, were not brought into force. However, the 1968 Act s 24 is amended, s 25 is substituted, and ss 25A and 25B are added by the 2004 Act Sch 3 paras 12, 13; and amended by the Armed Forces Act 2006 Sch 8 para 25-28, and the Criminal Justice and Immigration Act 2008 Sch 25 para 4, Sch 28 Pt 3. The substance and numbering of the 1968 Act ss 24 and 25 (both as so amended and substituted) remain the same.

A person may, with the leave of the Appeal Court, appeal against the making by the Court Martial of a hospital order, an interim hospital order, or a service supervision order (as defined by the Armed Forces Act 2006 s 170 (see PARA 519A.3)) in respect of him: s 25A (as so added; substituted by the Armed Forces Act 2006 Sch 8 para 27). If on an appeal under the 1968 Act s 25A the Appeal Court considers that the appellant should be dealt with differently from the way in which the Court Martial dealt with him it may quash any order which is the subject of the appeal, and it may make such order, whether by substitution for the original order or by variation of or addition to it, as it thinks appropriate for the case and as the Court Martial had power to make: s 25B(1) (s 25B as so added; s 25B(1), (2) amended, s 25B(3), (4) substituted for s 25B(3)-(5) by the Armed Forces Act 2006 Sch 8 para 28). The fact that an appeal is pending against an interim hospital order does not affect the power of the Court Martial to renew or terminate the order or deal with the appellant on its termination: 1968 Act s 25B(2). Section 16(5) (see PARA 544) applies in relation to interim hospital orders made by virtue of s 25B as it applies in relation to such orders made by virtue of s 16: s 25B(3). The fact that an appeal is pending against a service supervision order does not affect any power conferred on any other court to revoke or amend the order: s 25B(4).

As to the effect of interim hospital orders see Courts-Martial (Appeals) Act 1968 s 35A (added by Criminal Justice and Immigration Act 2008 Sch 25 para 5). See further Courts-Martial (Appeals) Act 1968 s 36(1)(ha) (added by Criminal Justice and Immigration Act 2008 Sch 25 para 6).

TEXT AND NOTES 4-6--Courts-Martial (Appeals) Act 1968 s 25(1A), (1B) added, s 25(2) (as substituted) (see NOTES 1, 5) amended, s 25(3) (as substituted) further substituted:
Armed Forces Act 2006 Sch 8 para 26.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(v) The Hearing and Disposal of the Appeal/547. Declarations of incompatibility in respect of human rights.

547. Declarations of incompatibility in respect of human rights.

The Courts-Martial Appeal Court is entitled to make a declaration that a statute is not compatible with the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹ where a conflict between the convention and primary legislation cannot be resolved by interpreting the legislation in such a way as to avoid a conflict². The court may also declare subordinate legislation to be incompatible with Convention rights where primary legislation prevents removal of the incompatibility³. The court must not consider making a declaration of incompatibility unless it has given written notice⁴ to the Crown⁵. Where notice has been given to the Crown, a minister or other person entitled under the Human Rights Act 1998 must be joined as a party to proceedings on giving written notice to the court⁶.

A declaration of incompatibility does not affect the validity of the legislation⁷ but confers a power on the relevant minister to amend it by remedial order⁸. A minister or other person who has been joined as a party to proceedings before the Courts-Martial Appeal Court may, with leave, appeal to the House of Lords against any declaration of incompatibility⁹.

1 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969); see the Human Rights Act 1998 s 1(3), Sch 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 See the Human Rights Act 1998 s 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. So far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with Convention rights: see s 3(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 See *ibid* s 4(4); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 A notice must provide an outline of the issues in the case and specify: (1) the appellant; (2) the person to whom his petition was presented under the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 3(1) (as substituted), or to whom it was sent under r 3(3) (as substituted) (see para 532 ante); (3) the date on which and place at which the court-martial was held; and (4) the provision of primary legislation and the Convention right in question: r 8A(4) (r 8A added by SI 2000/2228).

5 See the Human Rights Act 1998 s 5 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS); and the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8A(1) (as added: see note 4 supra). A notice of application for leave to appeal to the Courts-Martial Appeal Court must specify any application for a declaration of incompatibility under the Human Rights Act 1998 s 4 or any issue for the court to decide which may lead to the court making such a declaration: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 4(1A) (added by SI 2000/2228). Where the notice of application for leave to appeal includes such an application or issue, a copy of the notice must be served by the appellant on the person to whom a petition may be presented under the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 3(1) (as substituted) (see para 532 ante), whichever is appropriate in the circumstances: r 4(1B) (added by SI 2000/2228).

A notice given under the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8A(1) (as added) must be served on: (1) the person named in the list published under the Crown Proceedings Act 1947 s 17(1) (as amended) (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 17(1) (Reissue) para 119); or (2) in case of doubt as to whether any and if so which of those departments is appropriate, on the Treasury Solicitor: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8A(3) (as added: see note 4 supra).

6 *Ibid* r 8A(2) (as added: see note 4 supra). See CONSTITUTIONAL LAW AND HUMAN RIGHTS. Unless the court otherwise directs, the minister or other person entitled under the Human Rights Act 1998 to be joined as a party must, if he is to be joined, give written notice to the court and to every other party: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8A(6) (as so added). Where a Minister has nominated a person to be joined as a party by virtue of the Human Rights Act 1998 s 5(2)(a) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS), the notice must be

accompanied by a written nomination signed by or on behalf of the minister: Courts-Martial Appeal Rules 1968, SI 1968/1071, r 8A(7) (as so added).

Any consideration of whether a declaration of incompatibility should be made must be adjourned for: (1) 21 days from the date of the notice given to the Crown; or (2) such other period specified in the notice as the court allows, in order that the relevant minister or other person may seek to be joined and to prepare his case: r 8A(5) (as so added).

See also *R v A (Joinder of Appropriate Minister)* [2001] 1 WLR 789, HL.

7 See the Human Rights Act 1998 s 4(6); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

8 See *ibid* s 10, Sch 2 para 7 (as added); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 See *ibid* s 5(4), (5); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

547 Declarations of incompatibility in respect of human rights

TEXT AND NOTES--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(v) The Hearing and Disposal of the Appeal/548. Appeals against sentence.

548. Appeals against sentence.

On an appeal against sentence¹, if the Courts-Martial Appeal Court considers that the sentence is not appropriate for the case, it may quash the sentence and pass in substitution for it such sentence as it thinks appropriate, being a sentence which the court-martial had power to pass and which is not of greater severity than that for which it is substituted². On appeal, any persons in whose favour a restitution or compensation order was made at the court-martial (or with the leave of the court, any other person) is entitled to address the court on the issue of annulling or varying the order³.

1 As to the right of appeal see para 530 ante.

2 Courts-Martial (Appeals) Act 1968 s 16A (added by the Armed Forces Act 1971 s 73(3)). As to references to sentences in the Courts-Martial (Appeals) Act 1968 s 16A (as added) see para 544 note 7 ante. For general and specific sentencing principles see para 424 ante.

3 See the Courts-Martial Appeal Rules 1968, SI 1968/1071, r 20(2). As to the court's power to annul or vary a restitution or compensation order see the Army Act 1955 s 138(9)(d); the Air Force Act 1955 s 138(9)(d); the Naval Discipline Act 1957 s 77(2) (as amended); and paras 471, 510 ante.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

542-548 The Hearing and Disposal of the Appeal

As to the power to dismiss certain appeals following references by the Criminal Cases Review Commission see Courts-Martial (Appeals) Act 1968 s 25C (added by Criminal Justice and Immigration Act 2008 Sch 25 para 2).

548 Appeals against sentence

TEXT AND NOTES 1, 2--Courts-Martial (Appeals) Act 1968 s 16A substituted: Armed Forces Act 2006 Sch 8 para 16.

TEXT AND NOTE 3--SI 1968/1071 replaced: Court Martial Appeal Court Rules 2009, SI 2009/2657.

NOTE 3--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

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(vi) Authorisation of Retrial of Appellant by Court-Martial

549. Power of Courts-Martial Appeal Court to authorise retrial.

The Courts-Martial Appeal Court has power¹, on quashing a conviction, to make an order authorising the retrial² of the appellant by court-martial, but may do so only when it appears to the court that the interests of justice require an order authorising a new trial to be made³. The court may direct that such a retrial is to be on a fresh charge or charges specified in the direction⁴. On authorising a retrial, the court may make such orders as appear to it to be necessary or expedient for the retention until the relevant time⁵ of property or money which has been restored, delivered or paid in pursuance of an order made on or in consequence of the original conviction or has been placed in safe custody while the operation of any such order is suspended⁶.

The limitations imposed by the service discipline Acts as to the time within which a trial by court-martial under those Acts may be begun⁷ do not apply in the case of a retrial authorised by the Courts-Martial Appeal Court, but there can be no retrial unless the order convening the court-martial for that purpose is issued within three months beginning with the date of the court order authorising the retrial⁸.

1 The provisions of the Courts-Martial (Appeals) Act 1968 ss 19, 20 (both as amended), and of Sch 1 Pts II, IV (power of Courts-Martial Appeal Court to authorise retrial and supplementary provisions applicable when the power is exercised), apply with any necessary modifications in relation to the review by the reviewing authority under the Army Act 1955 s 113, the Air Force Act 1955 s 113 or the Naval Discipline Act 1957 s 70 (all as substituted and amended) (see paras 473, 512 ante) of the findings of a court-martial, as they apply in relation to an appeal to the Courts-Martial Appeal Court: Army Act 1955 s 113A; Air Force Act 1955 s 113A; Naval Discipline Act 1957 s 71A (all added by the Courts-Martial Appeal Act 1968 s 58, Sch 4; and amended by the Armed Forces Act 1996 s 16, Sch 5 paras 5, 11).

2 The Courts-Martial Appeal Court authorises a retrial, which, however, cannot take place unless a convening order is issued: see the text and notes 5-6 infra.

3 Courts-Martial (Appeals) Act 1968 s 19(1) (amended by the Armed Forces Act 1991 s 26, Sch 2 para 8, Sch 3).

4 Courts-Martial (Appeals) Act 1968 s 19(4). Whether the person is retried on a fresh charge or charges or on one or more of the original charges, there must not be any fresh investigation or other steps taken under the Army Act 1955 s 76 (as substituted) and ss 76A, 76AA, 76B, 76C (all as added and amended) or the Air Force Act 1955 s 76 (as substituted) and ss 76A, 76AA, 76B, 76C (all as added and amended) (which relate, inter alia, to the investigation of and summary disposal of charges by commanding officers: see paras 353 et seq ante), in relation to the charge or charges on which the retrial is to take place: Courts-Martial (Appeals) Act 1968 s 19(4). Since no further investigation by the commanding officer takes place, he makes no fresh reference to higher authority and there is no fresh reference to the prosecuting authority. An appellant may only be retried for: (1) the offence of which he was convicted by the original court-martial and in respect of which his appeal is allowed; (2) any offence of which he could have been convicted at the original trial on a charge of the first-mentioned offence; or (3) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting the appellant of the first-mentioned offence: s 19(3).

5 'The relevant time' means the expiration of the period of three months from the date of the order of the court authorising a retrial (see note 8 infra) or, if during that period a court-martial has been convened for the retrial, the time when the case is finally disposed of; but if the appellant is found guilty on retrial, the relevant time is the expiration of the period of 28 days from the date of the finding: *ibid* s 20(5).

6 *Ibid* s 20(2). The power to make orders under s 20(2) may be exercised by a single judge of the court in the same manner as it may be exercised by the court and subject to the same provisions: s 36(1)(d). As to

restitution and compensation orders, and the safeguarding, pending appeal, of the property or money to which any such order relates, see para 510 ante. Where the person whose retrial is authorised was, immediately before the date of the authorisation, liable to be detained in pursuance of a direction under the Mental Health Act 1983 Pt III (ss 35-55) (as amended), or under the corresponding legislation in Scotland or Northern Ireland, that direction continues in force until the relevant time as if his conviction had not been quashed: Courts-Martial (Appeals) Act 1968 s 20(3), (4) (amended by the Mental Health Act 1983 s 148(1), Sch 4 para 24(a)). As to evidence and sentencing on retrial see paras 550-551 post.

7 As to these time limits see para 304 ante.

8 Courts-Martial (Appeals) Act 1968 s 20(1). The power of the Courts-Martial Appeal Court to authorise a retrial is not affected by the restrictions on retrial imposed by the Army Act 1955 s 134 (as amended) and the Air Force Act 1955 s 134 (as amended) (see para 486 ante): Courts-Martial (Appeals) Act 1968 s 19(2).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

549 Power of [Court Martial] Appeal Court to authorise retrial

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

TEXT AND NOTES 1-4, 8--Courts-Martial (Appeals) Act 1968 s 19(1)-(4) amended, s 19(5) added: Armed Forces Act 2006 Sch 8 para 20.

TEXT AND NOTES 1-3--Where retrial is authorised in the case of certain persons who were subject to a community treatment order (see MENTAL HEALTH vol 30(2) (Reissue) PARA 528A), the order continues in force until the relevant time as if the conviction had not been quashed: see Courts-Martial (Appeals) Act 1968 s 20(4A), (4B) (added by Mental Health Act 2007 Sch 4 para 3(2)).

TEXT AND NOTES 5, 6--Courts-Martial (Appeals) Act 1968 s 20(2A), (3A) added, s 20(3) amended, s 20(4) further amended, s 20(5) repealed: Armed Forces Act 2006 Sch 8 para 21(b)-(f).

TEXT AND NOTES 7, 8--Courts-Martial (Appeals) Act 1968 s 20(1)-(1H) substituted for s 20(1): Armed Forces Act 2006 Sch 8 para 21(a).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(vi) Authorisation of Retrial of Appellant by Court-Martial/550. Evidence on a retrial.

550. Evidence on a retrial.

On a retrial of a person by court-martial¹, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence: (1) by agreement between the prosecution and defence; or (2) if the court is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success, or that owing to the exigencies of the service it is not practicable for him to attend².

¹ le under the Courts-Martial (Appeals) Act 1968 s 19 (as amended): see para 549 ante.

² Ibid s 20(6), Sch 1 paras 1, 3, 5. The record may be read without further proof if it forms part of the original proceedings of the original court-martial or a copy of it, and those proceedings are, or the copy is, admissible as evidence under the Army Act 1955 s 200, the Air Force Act 1955 s 200, or the Naval Discipline Act 1957 s 129C (as added) (see para 387 ante), as the case may be: Courts-Martial (Appeals) Act 1968 Sch 1 paras 1, 3, 5 (Sch 1 para 1 amended by the Armed Forces Act 1971 s 57(2)). See further para 387 ante. If the prosecution wish to rely on this evidence it must be served on the defence as additional evidence under the Courts-Martial (Army) Rules 1997, SI 1997/169, r 20, the Courts-Martial (Royal Navy) Rules 1997, SI 1997/170, r 20, or the Courts-Martial (Royal Air Force) Rules 1997, SI 1997/171, r 20: see para 489 ante.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

550 Evidence on a retrial

TEXT AND NOTES--Courts-Martial (Appeals) Act 1968 s 20(6) amended: Armed Forces Act 2006 Sch 8 para 21.

NOTE 2--SI 1997/169 replaced: Courts-Martial (Army) Rules 2007, SI 2007/3442. SI 1997/170 replaced: Courts-Martial (Royal Navy) Rules 2007, SI 2007/3443. SI 1997/171 replaced: Courts-Martial (Royal Air Force) Rules 2007, SI 2007/3444.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(vi) Authorisation of Retrial of Appellant by Court-Martial/551. Sentence on conviction on retrial.

551. Sentence on conviction on retrial.

On conviction on retrial, the court-martial may not pass a sentence of greater severity than that passed on the original conviction, but otherwise may pass any sentence¹ authorised by the Act under which the offender is retried².

1 Where the offender is a civilian, the sentence may consist of any order authorised by the Army Act 1955 s 209, Sch 5A (as added and amended), the Air Force Act 1955 s 209, Sch 5A (as added and amended), or the Naval Discipline Act 1957 s 118, Sch 4A (as added and amended), as the case may be (see para 430 ante), and for the purposes of whichever of those Acts is applicable any such order is treated as a punishment: Army Act 1955 s 209(3)(a)(iii), (aa) (added by the Armed Forces Act 1976 s 22(5), Sch 9 para 5); Air Force Act 1955 s 209(3)(a)(iii), (aa) (added by the Armed Forces Act 1976 Sch 9 para 5); Naval Discipline Act 1957 s 118(3B) (added by the Armed Forces Act 1976 Sch 9 para 10).

2 Courts-Martial (Appeals) Act 1968 s 20(6), Sch 1 paras 2, 4, 6. In calculating the period for which an offender is liable to imprisonment or to be detained in pursuance of a sentence of imprisonment or detention passed on his retrial, there must be taken into account: (1) any time before the original conviction was quashed which would have been taken into account in calculating the period of imprisonment or detention imposed at the original trial; (2) any time after the quashing of the original conviction which the offender has spent under close arrest awaiting retrial: Sch 1 para 7.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

551 Sentence on conviction on retrial

TEXT AND NOTES--Courts-Martial (Appeals) Act 1968 s 20(6) amended: Armed Forces Act 2006 Sch 8 para 21.

NOTE 1--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006.

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/ (vii) Procedure pending Appeal to the House of Lords/552. Finality of appeal; bail or detention pending appeal to the House of Lords.

(vii) Procedure pending Appeal to the House of Lords

552. Finality of appeal; bail or detention pending appeal to the House of Lords.

Subject to the provision for appeal to the House of Lords¹, no appeal lies from any decision of the Courts-Martial Appeal Court².

The Courts-Martial Appeal Court may grant bail pending appeal, or application for leave to appeal, to the House of Lords³. This power may be exercised by the single judge⁴.

Where the accused would, but for the decision of the Courts-Martial Appeal Court, be liable to be detained, and immediately after that decision the Defence Council⁵ is granted, or gives notice that it intends to apply for, leave to appeal, that court may make an order providing for the detention of the accused, or directing that he must not be released except on bail, so long as any appeal to the House of Lords is pending⁶. Unless the appeal has been previously disposed of, such an order ceases to have effect at the expiration of the period for which the accused would have been liable to be detained but for the court's decision⁷. Where that court has power to make such an order, and either no order is made or the accused is released or discharged⁸ before the appeal is disposed of, he is not liable to be again detained as a result of the decision of the House of Lords⁹. An appeal to the House of Lords may be begun or continued on behalf of a deceased person by a person approved by the court¹⁰.

1 See the Courts-Martial (Appeals) Act 1968 Pt III (ss 39-48A); and COURTS.

2 Ibid s 1(4).

3 See ibid s 42. At the date at which this volume states the law the power to grant bail is only applicable in respect of persons not subject to naval discipline or to military or air force law who are liable by virtue of the service discipline Acts to be tried as if they were so subject, or who are subject to naval discipline only by virtue of the Naval Discipline Act 1957 s 119 (see para 306 ante): Courts-Martial (Appeals) Act 1968 s 42. As to persons subject to naval discipline or to military or air force law, and as to the persons not so subject who are liable by virtue of the service discipline Acts to be tried as if they were so subject, see para 306 et seq ante. As to the service discipline Acts see para 302 ante. As from a day to be appointed s 42 is to be amended by the Armed Forces Act 2001 ss 30(7), 38, Sch 7 Pt 7, so as to provide that the power of the Courts-Martial Appeal Court to grant bail is applicable in respect of all persons applying for leave to appeal to the House of Lords from a decision of the Courts-Martial Appeal Court. At the date at which this volume states the law no such day had been appointed.

4 The power of the Courts-Martial Appeal Court to grant bail, and other interim powers relating to appeals to the House of Lords, may be exercised by any judge of the court, subject to the applicant's right (if his application is refused) to have it determined by the full court: see the Courts-Martial (Appeals) Act 1968 s 48.

5 As to the Defence Council see para 2 ante.

6 Courts-Martial (Appeals) Act 1968 s 43(1). Section 43(1) covers the case of an accused who has been awarded a custodial sentence at his trial by court-martial, or who, following that trial, is detained under the Mental Health Act 1983 or the corresponding legislation in Scotland or Northern Ireland, and who is successful in his appeal to the Courts-Martial Appeal Court, after which the Defence Council seeks to appeal to the House of Lords. An order under the Courts-Martial (Appeals) Act 1968 s 43(1) is an order authorising the continued detention of the accused pending the appeal to the House of Lords, subject to his right to apply to the court for bail: see s 43(3). If he is a person who (but for the court's decision on his original appeal) would be detained in pursuance of an order or direction under mental health legislation, any court order under s 43 (as amended) must authorise his continued detention in pursuance of that order or direction and the relevant provisions of the legislation (including those as to the renewal of authority for detention and the removal or discharge of

patients) will apply: s 43(3), (4) (amended by the Mental Health Act 1983 s 148(1), Sch 4 para 24(a)). As to detention under the mental health legislation see MENTAL HEALTH vol 30(2) (Reissue) para 486 et seq.

7 Courts-Martial (Appeals) Act 1968 s 43(2).

8 le on the order ceasing to have effect by virtue of ibid s 43(2), or by virtue of discharge under s 43(3).

9 Ibid s 43(5). Thus if the court, on quashing the conviction or sentence of an appellant who was awarded a custodial sentence at his trial by court-martial, makes no order pursuant to s 43(1) (see the text and note 6 supra), or that order ceases to have effect (see the text and note 8 supra), and the House of Lords ultimately reverses the court's decision to allow the appellant's original appeal, he cannot be arrested again to serve the balance of his sentence.

10 See ibid s 48A (as added); and para 534 ante.

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

552 Finality of appeal; bail or detention pending appeal to the [Supreme Court]

TEXT AND NOTES 5, 6--Courts-Martial (Appeals) Act 1968 s 43(1)-(1B) substituted for s 43(1): Armed Forces Act 2006 Sch 8 para 43(a).

TEXT AND NOTES 6-9--Courts-Martial (Appeals) Act 1968 s 43 further amended: Criminal Justice and Immigration Act 2008 Sch 25 para 9.

NOTE 6--Courts-Martial (Appeals) Act 1968 s 43(4) amended: Armed Forces Act 2006 Sch 8 para 43(b). The relevant provisions of the Mental Health Act 1983 with respect to community treatment orders (see MENTAL HEALTH vol 30(2) (Reissue) PARA 528A) also apply for the purposes of the Courts-Martial (Appeals) Act 1968 s 43(3): s 43(3A) (added by Mental Health Act 2007 Sch 4 para 3(3)). The Appeal Court may make an order for the continuation of a community treatment order where but for its decision, the accused would be liable to recall (because he is subject to a community treatment order and, when it was made, he was liable to be detained), and immediately after that decision, the Director of Service Prosecutions is granted leave to appeal or gives notice that he intends to apply for leave to appeal: Courts-Martial (Appeals) Act 1968 s 43A (added by Mental Health Act 2007 Sch 4 para 3(4)).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(viii) Legal aid; Costs on Appeal/553. Representation orders.

(viii) Legal aid; Costs on Appeal

553. Representation orders.

At a court-martial an accused may be legally aided through the army and air force non-statutory schemes. Proceedings before the Courts-Martial Appeal Court are criminal proceedings¹ and the court may grant a representation order, on the same basis as for an appeal to the Court of Appeal (Criminal Division)².

1 See the Access to Justice Act 1999 s 12(2).

2 See the Criminal Defence Services (General) (No 2) Regulations 2001, SI 2001/1437, regs 6-10 (as amended).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

Halsbury's Laws of England/ARMED FORCES (VOLUME 2(2) (REISSUE))/4. DISCIPLINE IN THE ARMED FORCES/(7) COURTS-MARTIAL APPEALS/(viii) Legal aid; Costs on Appeal/554. Costs.

554. Costs.

Where the Courts-Martial Appeal Court allows an appeal (other than an appeal against sentence) it may, if it thinks fit, direct the payment by the Secretary of State¹, as costs, of such sums as appear to the court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the prosecution of his appeal (including any proceedings preliminary or incidental to it), or in carrying on his defence before the court-martial from which the appeal lies, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the first-mentioned court-martial². Where the court dismisses an appeal or application for leave to appeal, it may, if it thinks fit, order the appellant or applicant, as the case may be, to pay to the Secretary of State the whole or any part of the costs of the appeal or application, including the costs of copying or transcribing any documents for the use of the appeal court³.

Whether or not the court exercises any of these powers as to the award of costs, it may order the payment of expenses properly incurred by any person properly attending to give evidence on any appeal or any proceedings preliminary or incidental to it, and to compensate any such person for the trouble or loss of time properly incurred in or incidental to his attendance⁴.

On determining an appeal from the Courts-Martial Appeal Court, the House of Lords may, if it thinks fit, direct the payment by the Secretary of State of such sums as appear to it to be reasonably sufficient to compensate the accused for any expenses properly incurred by him: (1) in the appeal to the House of Lords; (2) in the prosecution of his appeal to the Courts-Martial Appeal Court (including any proceedings preliminary or incidental to it); and (3) in carrying on his defence before the court-martial by which he was convicted or found not guilty by reason of insanity or unfit to stand his trial, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted or so found, as the case may be⁵.

Where the Courts-Martial Appeal Court or the House of Lords dismisses an application for leave to appeal to that House, and the application was made by the Secretary of State, the court or the House may direct the payment by the Secretary of State of such sums as appear to the court or the House to be reasonably sufficient to compensate the accused for any expenses properly incurred by him in resisting the application⁶; and, where such an application was made by the accused, the court or the House may make an order equivalent to that which may be made by the court⁷ on dismissing an appeal or an application for leave to appeal⁸.

Except as provided by the Courts-Martial (Appeals) Act 1968⁹, no costs are allowed on the hearing or determination of an appeal from the Courts-Martial Appeal Court to the House of Lords or of any proceedings preliminary or incidental to such an appeal¹⁰.

As from a day to be appointed¹¹, the Secretary of State may by regulations¹² make provision empowering the Courts-Martial Appeal Court, in any case where the court is satisfied that one party to proceedings for an offence under any of the service discipline Acts¹³ has incurred costs¹⁴ as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings, to make an order as to the payment of those costs¹⁵. It is also provided that in any proceedings for an offence under any of the service discipline Acts, the Courts-Martial Appeal Court may disallow, or (as the case may be) order the legal or other representative¹⁶ concerned to meet, the whole of any wasted costs¹⁷ or such part of them as may be determined in accordance with regulations¹⁸.

1 As to the Secretary of State see para 2 ante.

2 Courts-Martial (Appeals) Act 1968 s 31 (amended by the Armed Forces Act 1971 s 73(4), Sch 2 para 1(6)). Without prejudice to the Courts-Martial (Appeals) Act 1968 s 31 (as amended), the Secretary of State may be directed by the Courts-Martial Appeal Court to pay to any appellant who, not being in custody, appears before the court on the hearing of his appeal or in any preliminary or incidental proceedings, the expenses of his appearance: s 33A (added by the Administration of Justice Act 1977 s 5(1)).

3 Courts-Martial (Appeals) Act 1968 s 32(1). The court's power to make an order under s 32(1) for the payment of costs by an unsuccessful appellant or applicant may be exercised by any judge of the court in the same manner, and subject to the same provisions, as it may be exercised by the court: s 36(1)(g). An order made under the Courts-Martial (Appeals) Act 1968 s 32(1) may be enforced in the same manner as an order for the payment of costs made by the Court of Appeal (Criminal Division), or by making deductions from pay due to the appellant or applicant, as the case may be, or partly in the one way and partly in the other: s 32(2) (amended by the Administration of Justice Act 1970 s 41(7); and the Armed Forces Act 1996 s 35(2), Sch 7 Pt III). Any sums recovered by the Secretary of State must be paid into the Exchequer: Courts-Martial (Appeals) Act 1968 s 32(3).

4 Ibid s 33. See also para 540 ante.

5 Ibid s 47(3) (amended by the Administration of Justice Act 1977 s 5(4)). The terms of this provision enable the House of Lords to direct the payment of costs to the accused whether the appeal to that House was at his instance or at the instance of the Secretary of State, and whether or not the accused was successful in the appeal. An award of costs to an unsuccessful accused person might be appropriate where he had little personal interest in the determination of a point of law of general public importance tested in the appeal.

6 Courts-Martial (Appeals) Act 1968 s 47(1).

7 Ie under ibid s 32(1); see the text to note 3 supra.

8 Ibid s 47(2). Any order so made may be enforced in the manner described in s 32(2) (as amended) (see note 3 supra): s 47(2).

9 Ie by ibid s 47(1)-(3) (as amended): see the text and notes 5-8 supra.

10 Ibid s 47(4).

11 The Armed Forces Act 2001 ss 26-28 are to be brought into force as from a day to be appointed by order under s 39(2). At the date at which this volume states the law no such day had been appointed.

12 The regulations must provide that a person against whom an order is made by a court-martial under the regulations may appeal to the Courts-Martial Appeal Court: ibid s 26(3)(a) (not yet in force). The regulations may, in particular: (1) allow the making of an order as to the payment of costs at any time during the proceedings; (2) make provision as to the account to be taken, in making such an order, of any other order as to costs which has been made in respect of the proceedings or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988 or under any legal aid scheme operated by any of Her Majesty's forces; (3) make provision as to the account to be taken of such an order in the making of any other order as to costs in respect of the proceedings; and (4) make provision as to appeals against orders made by virtue of the regulations: Armed Forces Act 2001 s 26(2)(a)-(c), (e) (not yet in force)). As to the meaning of 'Her Majesty's forces' see para 20 note 7 ante.

13 As to the service discipline Acts see para 302 ante.

14 Where any of Her Majesty's forces incurs costs in respect of the exercise by the prosecuting authority of its functions as a party to proceedings under the service discipline Acts, those costs are taken for these purposes to have been incurred by the prosecuting authority (Armed Forces Act 2001 s 28(1) (not yet in force)), although regulations under s 26 (not yet in force) or s 27 (not yet in force) may make provision as to the costs incurred by any of Her Majesty's forces which are or are not to be taken to have been incurred by the prosecuting authority and as to the person to whom, or account into which, any payment in respect of costs incurred by the prosecuting authority is to be made (s 28(2) (not yet in force)). For these purposes, 'the prosecuting authority' means the prosecuting authority appointed under the Army Act 1955 s 83A (as added), the Air Force Act 1955 s 83A (as added) (see para 315 ante) or the Naval Discipline Act 1957 s 52H (as added) (see para 316 ante), as the case may be: Armed Forces Act 2001 s 28(3) (not yet in force).

15 Ibid s 26(1) (not yet in force).

16 For these purposes, 'legal or other representative', in relation to any proceedings, means a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings, or a

prosecuting officer appointed under the Army Act 1955 s 83C (as added), the Air Force Act 1955 s 83C (as added) (see para 315 ante) or the Naval Discipline Act 1957 s 52J (as added) (see para 316 ante), as the case may be: Armed Forces Act 2001 s 27(3) (not yet in force).

17 le any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of a representative, or which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay: *ibid* s 27(3) (not yet in force).

18 *Ibid* s 27(1)(c) (not yet in force). The regulations must provide that a legal or other representative against whom action is taken by a court-martial under these powers may appeal to the Courts-Martial Appeal Court: s 27(2)(a) (not yet in force). 'Regulations' means regulations made by the Secretary of State: s 27(3) (not yet in force).

UPDATE

529-554 [Court] Martial Appeals

The Courts-Martial Appeal Court is renamed the Court Martial Appeal Court: Armed Forces Act 2006 s 272(1).

554 Costs

TEXT AND NOTES 1, 2--Courts-Martial (Appeals) Act 1968 s 31 further amended: Armed Forces Act 2006 Sch 8 para 33.

NOTE 3--Courts-Martial (Appeals) Act 1968 s 32(2) further amended: Armed Forces Act 2006 Sch 8 para 34. Courts-Martial (Appeals) Act 1968 s 36(1)(g) amended: Armed Forces Act 2006 Sch 8 para 37.

TEXT AND NOTES 5-10--Courts-Martial (Appeals) Act 1968 s 47 further amended: Constitutional Reform Act 2005 Sch 9 para 17(9); Armed Forces Act 2006 Sch 8 para 45.

TEXT AND NOTES 11-15--Armed Forces Act 2001 s 26(1)-(3) amended: Armed Forces Act 2006 Sch 16 para 192.

TEXT AND NOTE 11--Day now appointed: SI 2005/2861.

NOTE 12--Legal Aid Act 1988 repealed: Access to Justice Act 1999 Sch 15 Pt I. See LEGAL AID vol 65 (2008) PARA 2.

NOTE 14--Armed Forces Act 2001 s 28(1), (2) amended, s 28(3) repealed: Armed Forces Act 2006 Sch 16 para 194, Sch 17.

TEXT AND NOTES 16-18--Armed Forces Act 2001 s 27(1), (2) amended: Armed Forces Act 2006 Sch 16 para 193(2), (3).

NOTE 16--Definition of 'legal or other representative' amended: Armed Forces Act 2006 Sch 16 para 193(4).

